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Wm. Jenn. Cullen
U. S. Senate.

*To the Honorable Senate, House of Representatives, and
Court of Claims, of the United States.*

Ex. 55

H. 57

CLAIMS

OF THE

OFFICERS OF THE REVOLUTION,

UNDER THE RESOLVE OF OCTOBER 21, 1780.

ALSO,

Claims for Seven Years Half Pay to the
Widows and Children,

UNDER THE RESOLVE OF AUGUST 24, 1780.

FROM A "BOOK ON PRIVATE CLAIMS."

BY NATHANIEL HATCH,
Counsellor at Law, 514 Twelfth street.

WASHINGTON, D. C.

1857.

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B R I E F
OF THE
LAWS AND ARGUMENT
IN BEHALF OF
THE HALF-PAY CLAIMS,
UNDER THE RESOLVE OF OCTOBER 21, 1780.

These claims consist of three several and *continuous* considerations, which were finally, by the act of October 21, 1780, blended in one entire contract :

1. Grants of land by the resolves of September 16 and 18, 1776 ;
2. Seven years half pay by the resolve of May 15, 1778 ;
3. Seven years half pay in specie or current money, October 3, 1780 ;

All, in *addition* to the land, to induce the officers and soldiers to serve during the war, and the promise of seven years half pay made to the supernumerary officers.

The act of October 21, 1780, was passed *after* the Government had become utterly insolvent ; *after* it had repudiated and scaled all of its most sacred debts ; *after* it had, by the acts of March and April 18, and June 28, 1780, declared that all of the Government paper which had issued, or should *thereafter* issue, to be of the value of two dollars and fifty cents to the hundred.

That the resolve of October 21, 1780, constituted a solemn contract with each officer for grants of land and half pay during life. The promise of land was blended with and made a part of the same entire consideration with the half-pay portion of the contract. The acknowledgment, presentation, or record, of the one, was the *presentation, promise, and record, of the other*. The suspension of the acts of limitation of one portion would equally affect the other. These were *vested rights*, and the contract could not be varied, rescinded, or impaired, by any subsequent acts of legislation, without the consent of each officer, *indi-*

vidually. Their rights were not affected by substituting the act of March 22, 1783, for five years full pay—1. Because that resolve was not passed until after the peace, after the contract had been fulfilled on the part of the officers; 2. Because the officers were expressly *prohibited* from expressing their dissent to the same; 3. Because it was passed at a time when it was well known to Congress that the Government were hopelessly insolvent, and had no power to comply with the *conditions* of that resolve, and ought not to have any binding force upon them. That it was merely a *proposition* to compromise a debt which had already accrued, which utterly failed, and therefore should make no difference whether they assented to it or not. It could not impair their rights under the original contract.

The depreciated certificates sent to the officers were a part of the resolve of 1783, as much so as if it had been attached; and as the interest was payable at the end of each year, the omission to pay the interest for a single year was not only a repudiation of the certificate, but also of the terms and conditions of the resolve itself, and did not repeal or affect the resolve of 1780.

The certificates sent to a captain, purporting to be of the value of \$2,400, at the time it was sent, was, by the laws of April and June, 1780, of the value of only \$60, and could not be an accord and satisfaction of only that amount.

3. Notwithstanding the Government continued during all the period of its existence hopelessly insolvent, and unable to pay even a single year's interest, refused to permit the officers to return their commutation in their own or other certificates, but confined that privilege to the invalid corps, they were worth no more to the officers than any certificates, and the *detention* or disposition of those certificates at their legal value could not have been of any injury to the Government, inasmuch as by *law* they were worth only two and a half dollars to the hundred; and if the Government allowed any more to *strangers*, it was to benefit holders and speculators, and in violation of the duty of Congress.

4. The rights of the claimants who survived were fully discussed by Congress, upon the report of the committee; for the act of May 15, 1828, restoring the surviving officers to their original rights as payees, not pensioners, but creditors of this Government; and the act of May 15, 1828, and the many subsequent acts of Congress, are some of the laws of the United States made by Congress, in pursuance of the Constitution, which are the legislative construction and declaration of the rights of these claimants, which that Constitution declares "shall be the

supreme law of the land," and restored the heirs of those officers who had deceased, as well as the living, to their original rights. This act made no deduction of the amount of commutation which had been or or which might thereafter be paid to any of said officers or their heirs, nor that payments made under said act of 1828 should be in full of said claims. The words of the act did not make the money payable to such officers as were entitled to *commutation*, but to those officers who were "entitled to half pay under the resolve of October 21, 1780." No language could be more express in the recognition of the original contract of 1780 than the act of May 15, 1828.

In addition to this act, are the many subsequent acts of Congress giving to the same officers who received the amount of fourteen years half pay under this act, an *additional amount* of five years full pay in specie, together with interest, and this at intervals between 1828 and 1838. That a special act or general act of Congress in behalf of a large number of the same class of claimants, resting upon the same contract, is a legislative construction and declaration of the rights of all the others. That the renewal of a promise or the acknowledgment of a debt to *one* of ever so many obligees or payees, is an acknowledgment and promise to all named in the same contract; equal and impartial justice being one of the great fundamental principles of the Constitution and the laws of our Government.

Grants of land were an *addition* to the money portion of the contract of 1780. The issuing of warrants and patents, and the record of the same, to the officers, are a presentation and acknowledgment and renewal of the promise of the money half-pay portion of the contract, and coextensive in all its relations between the officer and the Government, and cannot be separated. The time for receiving the land portion of the contract having been extended to the 26th of June, 1858, also extends to the half-pay portion, at least up to that time.

The claimants further urge, that the substitution of the act of 1783 instead of that of 1780, by the old Confederacy, and the act of the new Government prohibiting any suit against the United States in behalf of any of its creditors, was an entire suspension of the half-pay contract. And the old Confederacy having terminated without having paid any portion of said commutation certificates, was a full repudiation of the certificates and the resolve of 1783. The record of those certificates, land warrants, and patents, were the presentation, record, and evidence, of the original claim, and a bar against all limitation acts.

A law which confers a benefit or gratuity may impose conditions as a part of that consideration; but contracts already existing, which

become vested rights, are not subject to be impaired or rescinded by subsequent legislation, statute of limitation, or otherwise. The Government of the United States having established a court "to hear and determine all claims founded upon any law of Congress, or upon any contract, express or implied, with the Government of the United States," virtually by that act itself admits the parties for the *first time* to their rights as *creditors*, and cannot, after having declined the payment of claims for so many years, set up any statute of limitation as a bar to the claims. This act is virtually a *suspension* of all acts of limitation to all claims which existed against the Government before its passage.

The act does not authorize the court to consider any claim paid by any acts of limitation. The resolve of 1783 was founded entirely on the imperative *necessity* and *exigency* of the Government—a mere *proposition* and an attempt to compromise a debt, by substituting a new promise for a less amount, without security for the pledged faith of the nation for a much larger sum; which having utterly failed, and to the great injury of the claimants, left them to resort to their original contract.

It should not be forgotten, that Congress created, by positive law, *two several and distinct classes of currency*, which existed at the time these contracts with the officers were made. And the *important distinction between them was then recognised by both parties*.

One consisted of *specie*, the other of the *bills or certificates* of the Government, worth, at the time the contracts were made, on the third and twenty-first days of October, 1780, only two and a half dollars to the hundred. These contracts were *expressly made payable in specie or current money*, and not in the valueless certificates of the Government; and this just distinction is recognised in the act of March 22, 1783.

Keeping this fact in view, as the basis of the contract, it is impossible to imagine that these valueless certificates, sent to the officers, could have been intended as a compliance with the expressed requirements of *either act*. The amount of the *specie consideration* of the seven years half pay named in the resolve of October 3, 1780, and which was *included* in that of the *contract* of October 21, 1780, being \$1,680, would, of itself, purchase, for each Captain, over sixty-seven thousand dollars of these Government certificates; and be it remembered, that this valuation was made by Congress itself. Who, then, can say that where the contracts were originally founded upon the specie basis, *made payable in specie, or its equivalent*, that the certificates of the Government, sent to the officers, could have been an accord and satisfaction

toward this *specie consideration*, for any greater amount than they were worth by law, and for which they passed as currency? And the claimants say, Congress having pledged the public faith to these officers *to preserve and protect this preferred specie consideration*, they were in duty bound to have excluded all these commutation certificates, while in the hands of strangers, from the funding act of August 4, 1790.

WASHINGTON, D. C.,
514 Twelfth street, November, 1857.

The Government of the United States having established a Court "to hear and determine all claims founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, which may be suggested to it by a petition filed therein, and also all claims which may be referred to said Court by either House of Congress," has induced the author to compile and publish a work, entitled

"BOOK OF PRIVATE CLAIMS,

UNSETTLED AND UNPAID BY THE UNITED STATES."

The Court of Claims have endeavored to limit the powers of their jurisdiction as much as possible, and have decided that in order to justify a decision in favor of a claimant, his claim must in all cases be founded upon some *legal right*. This principle, the court say, has been adopted in cases of *Todd vs. the United States*, and *Lindsay vs. the same*: "The court has not regarded itself as a council, to advise Congress what was just and equitable; nor as a jury, to exercise a merely discretionary authority." "When a claim has been referred to them by either House of Congress, they have not supposed that the whole power of Congress over the matter was thereby delegated, but that they were to report their decision whether the claim was founded upon *any legal right*." Their opinion has been, that what was required by general principles "of justice, irrespective of law, was a matter, the decision of which *was not intended to be conferred upon the court*."

One object of the compilation of this work on Private Claims has been, to elicit the attention of Congress to the importance of *first disposing of those claims which are founded upon express contracts of the Government, especially where one contract may embrace a large class of claimants, of which each one is equally entitled; and in many cases where Congress may have admitted and paid claims to individuals of the same class, founded upon the same contract, but leaving a large majority of them unprovided for*. Where the delay has been such, on the *part of Congress*, that the *original parties* to whom the same was due have deceased, Congress, being the law-making power, have always exercised the right of saying to whom the same shall be paid. If the consideration of the contract was such, that public policy and humanity induced Congress to protect it to the *payee*—as in the

acts of May 15, 1828; June 7, 1832—by the same right they could extend that protection, and *order of priority* of payment, to the *heirs of the original grantees or payees*.

The most *important claims*—those which have remained the greatest period of time unpaid, for which Congress declared the “*faith of the nation hath been pledged*,” and the most numerous—are those of the *officers of the Revolution*, embraced in the resolves of Congress of October 21, 1780, which constituted a solemn contract with those officers *for half pay during life*, whose services, sufferings, and fortunes, gave to the people their liberty and a republican Government, enjoyed as much *now as then*, and which is descending with all its greatness and blessings to all future generations, embracing considerations of too great magnitude to be described or disregarded.

As those claims were viewed by Washington, and regarded by Congress, as having been founded upon *considerations* which were to give them a *precedence over all other claims* of the Government, contracted at a time *after* the Government had *utterly failed*, and the contract resting entirely upon the *good faith of the nation* for a *prospective* reward, I have thought it best to subjoin a concise history of the events which terminated in a *basis* of the contract for “*half pay during life*.”

Although, even at this late period of time, the *justice, expediency*, and policy, of the laws on which those claims are founded, are denied by some, yet we are bound to regard them as laws, and binding upon the Government; and more especially, since they have been *so pronounced and confirmed by many hundred of subsequent acts of Congress*.

Congress, by their resolve of June 15, 1775, after the Lexington affair, April 19, 1775, adopted the army raised in the Northern States, and elected George Washington Commander-in-chief. On the 21st of July, 1775, he was authorized to keep a force in Massachusetts, as he may deem necessary, not to exceed 22,000 men.

The army was increased from time to time, by the enlistment of soldiers for *short terms*.

It became necessary that the army should be increased, and Congress resolved to raise eighty-eight battalions, to be *enlisted for the war*, as soon as possible.

In order to induce officers and soldiers to make such an important engagement, Congress proposed to make them grants of lands, and did so, by their resolves of September 16, 1776; September 18, 1776; August 12, 1780; September 22, 1780.

BOUNTY LAND ACTS IN BEHALF OF OFFICERS AND SOLDIERS OF THE REVOLUTION, WHO ENGAGED FOR THE WAR.

To provide for the raising of eighty-eight battalions, to serve for the war.

“*Resolved*, That, in addition to a money bounty of twenty dollars to each non-commissioned officer and private soldier, Congress make provision for granting lands, in the following proportions, to the officers and soldiers who shall engage in the service, and continue

‘ therein to the close of the war, or until discharged by Congress, and to the representatives of such officers and soldiers as shall be slain by the enemy. Such lands to be provided by the United States; and whatever expense shall be necessary to procure such land, the said expense shall be paid and borne by the States, in the same proportion as the other expenses of the war, viz: to a colonel, five hundred acres; to a lieutenant colonel, four hundred and fifty acres; to a major, four hundred acres; to a captain, three hundred acres; to a lieutenant, two hundred acres; to an ensign, one hundred and fifty acres; each non-commissioned officer and soldier, one hundred acres.

[Resolution—In Congress, September 16, 1776.]

“ *Resolved*, That the bounty and grants of land offered by Congress, by a resolution of the 16th instant, as an encouragement to the officers and soldiers to engage to serve in the army of the United States during the war, shall extend to all who are, or shall be, enlisted for that term; the bounty of ten dollars, which any of the soldiers have received from the continent, on account of a former enlistment, to be reckoned in part payment of the twenty dollars offered by the said resolution: That no officer in the continental army be allowed to hold more than one commission, or to receive pay but in one capacity, at the same time.

[Resolution—In Congress, September 18, 1776.]

“ *Resolved*, That the provision for granting lands, by the resolution of September sixteenth, one thousand seven hundred and seventy-six, be and is hereby extended to the general officers, in the following proportion: to a major general, one thousand one hundred acres; to a brigadier general, eight hundred and fifty acres.

[Resolution—In Congress, August 12, 1780.]

“ Congress resumed the consideration of the report of the Committee on the Medical Department; and, on the consideration of the following, it was

“ *Resolved*, That the several officers of the medical department, except the clerks and stewards, shall, at the end of the war, be entitled to a certain provision of land, in the proportion following, to wit: the director to have the same quantity as a brigadier general; chief physicians and purveyor, the same as a colonel; physicians and surgeons, and apothecary, the same as a lieutenant colonel; regimental surgeons, and assistants to the purveyor and apothecary, the same as a major; hospital and regimental surgeon’s mate, the same as a captain.”

[Resolution—In Congress, September 22, 1780.]

On the 3d of October, 1780, Congress reorganized the army, and extended the grants of land to those officers who became supernumeraries.

Grants of land was the *first* inducement embraced in the engagement to serve during the war.

This was declared by the act of September 16, 1776, to be, “in addition” to the promise of their monthly pay and bounty money.

In order to defray the expenses of the war, Congress, by their resolve of 3d October, 1776, established a *loan office* in each State, and

for *continental money* or specie paid in, *certificates* were ordered to be given for the amount, promising the payment of the *principal* at future periods, and that the *interest* should be paid *annually* where the money was loaned. This system went into full operation, loans were made and largely increased by two emissions of the continental money of May 20, 1777, and April 11, 1778.

THE NECESSITY OF A HALF-PAY ESTABLISHMENT AS AN INDUCEMENT
TO SERVE DURING THE WAR.

A further consideration and still stronger inducement to serve during the war, appear from the following :

*Extract of a representation made by General Washington to a Committee of Congress,
January 29, 1778.*

“GENTLEMEN : The numerous defects in our present military establishments rendering many reformatations and many new arrangements absolutely necessary, and Congress having been pleased to appoint you a committee, in concert with me, to make and recommend such as shall appear eligible, in pursuance of the various objects in their resolution for that purpose, I have, in the following sheets, briefly delivered my sentiments upon such of them as seemed to me most essential, so far as observation has suggested and leisure permitted. These are submitted, and I shall be happy if they are found conducive to remedying the evils and inconveniences we are now subject to, and putting the army upon a more respectable footing. Something must be done—important alterations must be made—necessity requires that our resources should be enlarged and our system improved ; for without it, if the dissolution of the army should not be the consequence, at least its operations must infallibly be feeble, languid, and ineffectual.

“As I consider a proper and satisfactory provision for officers, in a manner, as the basis of every other regulation and arrangement necessary to be made, since without officers no army can exist ; and unless some measure be devised to place those of ours in a more desirable situation, few of them would be able, if willing, to continue in it.

“I shall begin with a few reflections, tending to prove the necessity of a ‘HALF-PAY ESTABLISHMENT.’

“A small knowledge of human nature will convince us, that, with far the greatest part of mankind, interest is the governing principle, and that almost every man is more or less under its influences. Motives of public virtue may for a time, or in particular instances, actuate men to the observance of a conduct purely disinterested ; but they are not of themselves sufficient to produce a persevering conformity to the refined dictates and obligations of social duty.

“Few men are capable of making a continual sacrifice of all views of private interest or advantage to common good. It is in vain to exclaim against the depravity of human nature on this account ; the fact is so ; the experience of every age and nation has proved it ; and we must in a great measure change the constitution of man, before we can make it otherwise. No institution not built on the presumptive truth of these maxims can succeed.

" We find these exemplified in the American officers, as well as in all other men. At the commencement of the dispute, in the first effusions of their zeal, and looking upon the service to be only temporary, they entered into it without paying any regard to pecuniary or selfish considerations. But finding its duration to be much longer than they at first suspected, and that, instead of deriving any advantage from the hardships and dangers to which they were exposed, they on the contrary were losers by their patriotism, and fell far short even of a competency to supply their wants, they have gradually abated in their ardor ; and, with many, an entire disinclination to the service, under its present circumstances, has taken place. To this, in an eminent degree, must be ascribed the frequent resignations daily happening, and the more frequent importunities for permission to resign, and from some officers of the greatest merit. To this, also, may we ascribe the apathy, inattention, and neglect of duty, which pervade all ranks, and which will necessarily continue and increase, while an officer, instead of gaining everything, is impoverished by his commission, and conceives he is conferring, not receiving, a favor, in holding it. There can be no sufficient tie upon men possessing such sentiments. Nor can any method be adopted to oblige those to a punctual discharge of duty who are indifferent about their continuance in the service, and are often seeking a pretext to disengage themselves from it. Punishment in this case will be unavailing ; but when an officer's commission is made valuable to him, and he fears to lose it, you may then exact obedience from him. It is not, indeed, consistent with reason or justice to expect that one set of men should make a sacrifice of property, domestic ease, and happiness, encounter the rigors of the field, the perils and vicissitudes of war, to obtain those blessings which every citizen will enjoy in common with them, without some adequate compensation. It must also be a comfortless reflection to any man, that after he may have contributed to securing the rights of his country, at the risk of his life and the ruin of his fortune there would be no provision made to prevent himself and family from sinking into indigence and wretchedness. Besides adopting some method to make the provision for officers equal to their present exigencies, a due regard should be paid to futurity. Nothing, in my opinion, would serve more promptly to reanimate their languishing zeal, and interest them thoroughly in the service, than a HALF-PAY ESTABLISHMENT. This would not only dispel the apprehension of personal distress at the termination of the war, from having thrown themselves out of professions and employments they might not have it in their power to resume, but would in a great degree relieve the painful anticipation of leaving their widows and orphans a burden on the charity of their country, should it be their lot to fall in its service.

" I am earnest in recommending this measure, because I know it is the general wish and expectation ; and that many officers, whom, upon every principle, we should wish to retain in the service, are only waiting to see whether something of the kind will or will not take place, to be determined in their resolutions either of staying in or quitting it immediately ; and I urge my sentiments with the greater

‘ freedom because I cannot, and shall not, receive the smallest benefit from the ESTABLISHMENT, and can have no other inducement for proposing it than a full conviction of its utility and propriety.

“ I am sensible the expense will be a capital objection to it ; but to this I oppose the necessity. The officers are now disappointed with their situation. If some generous expedient is not embraced to remove this discontent, so extensive a desertion of the service will ensue, and so much discouragement be cast upon those who remain, as must wound it in a very essential manner. Everything that has this effect has a tendency, at least, to protract the war, and, though dictated by a well-intended frugality, will, I fear, in the end, prove erroneous economy.”

Congress, being fully convinced of the propriety and necessity of making some further provision for the army, were pleased to pass the following resolutions :

IN CONGRESS, MAY 15, 1778.

“ *Resolved, unanimously,* That all military officers commissioned by Congress, who are now or hereafter may be in the service of the United States, and shall continue therein during the war, and not hold any office of profit under these States, or any of them, shall, after the conclusion of the war be entitled to receive annually for the term of seven years, if they live so long, one half of the present pay of such officers: *Provided,* That no general officer of the cavalry, artillery, or infantry, shall be entitled to receive more than the one half part of the pay of a colonel of such corps, respectively: *And provided,* That this resolution shall not extend to any officer in the service of the United States, unless he shall have taken an oath of obligation to, and shall actually reside within, some one of the United States.

“ *Resolved, unanimously,* That every non-commissioned military officer and soldier who hath enlisted or shall enlist into the service of these States for during the war, and shall continue therein to the end thereof, shall be entitled to receive a further reward of eighty dollars at the expiration of the war.”

In addition to the foregoing resolutions, Congress was pleased to make the following resolve, calculated to afford that relief to the unfortunate and distressed which humanity and gratitude demanded :

IN CONGRESS, AUGUST 24, 1780.

“ *Resolved,* That the resolution of the 15th May, 1778, granting half-pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of those officers who have died or shall hereafter die in the service ; to commence from the time of such officer’s death, and continue for the term of seven years ; or if there be no widow, or in case of her death or intermarriage, the said half pay be given to the orphan children of the officer dying as aforesaid, if he shall have left any.”

All the schemes of the Government to carry on the war by the aid of loan offices *utterly failed*; and hence, as early as March 18, 1780, Congress was obliged to relinquish the hope of redeeming the Govern-

ment paper, (much of it then being in the hands of the officers,) and on the 18th of April, 1780, passed a resolution "that the principal of all ' certificates taken out since the 18th of March, 1780, should be discharged at the rate of one Spanish milled dollar, or the current exchange thereof in other money at the time of payment, for forty dollars of the said bills of credit secured on loan; and that the principal of all certificates that should *thereafter be taken out*, until the further order of Congress, be *discharged* at the same rate and in the same manner as those that had been taken out since the 18th of March, 1780."

Here, then, was the *public declaration* of the *utter insolvency* of the Government, as early as the 18th of March, 1780. The army being *unpaid* for *past services*, the relation of creditor and debtor had thus become entirely changed.

In this desponding state of public affairs, it was found necessary to present some *still greater* inducement, if possible, which might influence the officers to continue in the service, *and often to supply themselves and corps the best manner they could*, Congress resolved that the restricting clause in the resolution of 15th May, 1778, granting half pay to the officers for seven years, expressed in these words, viz: "and not to hold office of profit under these States, or any of them," be, and is hereby, repealed.

These resolutions for a short time produced the desired effect; but the increasing distress of the army in the subsequent years, arising from the inability of the public to perform their engagements, caused such discontents and uneasiness, that alarming consequences were feared. At the same time, the reform of the army, which was proposed to take place by the resolution of Congress of the 3d October, 1780, not a little irritated the officers.

On the 3d of October, 1780, Congress reorganized the army, to take effect on the 1st of January, 1781, the effect of which was to throw many of the officers out of service. They therefore at the same time adopted the following resolution:

"And whereas, by the foregoing arrangement, many deserving officers must become *supernumerary*, and it is proper that regard be had to them:

"*Resolved*, That from the time the reform of the army takes place, they be entitled to half pay for seven years, in specie, or other current money equivalent, and *also grants of land* at the close of the war, agreeably to the resolution of the 16th of September, 1776."

It will be observed, by the following letter of General Washington, that it became necessary, inasmuch as there were no funds in the Treasury, to offer some strong inducement by pledging the *honor* of the nation for some *prospective* reward, and all were embraced in the resolve of October 21, 1780.

Transcript of a letter from General Washington to the President of Congress, dated near Passaic Falls, October, 11, 1780.

"That there are the most conclusive reasons for reducing the number of the regiments, no person acquainted with the situation of our affairs

‘ and the state of the army will deny. A want of officers, independent
 ‘ of other considerations, were sufficient to compel us. But that the
 ‘ temper of the army, produced by its sufferings, requires great caution
 ‘ in any reforms that are attempted, is a position no less evident than
 ‘ the former. In services the best established, where the hands of
 ‘ Government are strengthened by the strongest interests of the army
 ‘ to submission, the reducing its regiments and dismissing great part of
 ‘ its officers is always a measure of delicacy and difficulty. In ours,
 ‘ where the officers are held by the feeblest ties, and are mouldering
 ‘ away by daily resignations, it is peculiarly so. The last reduction
 ‘ occasioned many to quit the service, besides those who were reformed,
 ‘ and left durable seeds of discontent among those who remained.

“ The general topic of declamation was, that it was as hard as dishonorable for men who had made every sacrifice to the service, to be turned out of it at the pleasure of those in power, without an adequate compensation. In the maturity to which their uneasinesses have now arisen, from a continuance in misery, they will be still more impatient under an attempt of a similar nature. How far these dispositions may be reasonable, I pretend not to decide; but in the extremity to which we are arrived, policy forbids us to add new irritations. Too many of the officers wish to get rid of their commissions, but they are not willing to be forced to it. It is not the intention of these remarks to discourage a reform, but show the necessity to guard against the ill effects, by an ample provision both for the officers *who stay and for those who are reduced*. This should be the basis of the plan, and without it, I apprehend the most mischievous consequences. This would obviate many scruples that will otherwise be found prejudicial in the extreme. I am convinced Congress are not a little straitened in the means of a present provision so ample as to give satisfaction; but this proves the expediency of a *future one*, and brings me to that which I have so frequently recommended as the most economical, the most politic, and the most effectual, that could be devised—A HALF PAY FOR LIFE. Supported by the prospect of a permanent dependence, the officers would be *tied* to the service, and would submit to many momentary privations, and to inconveniences which the situation of public affairs make unavoidable. This is exemplified in the Pennsylvania, who, being upon this establishment, are so much interested in the service that, in the course of many months, there has been only one resignation in that line,” [the Pennsylvania line.]

Soon after the reception of the foregoing letter, Congress were pleased to pass the resolutions of October 21, 1780, hereto annexed.

Congress had no means to comply with the resolve of October 3, 1780, by which the Government promised to pay the *supernumerary officers* an amount of seven years half pay, in *specie* or current money, from 1st day of January, 1781. This promise was made *after* the Government had utterly failed. Hence the wisdom of Washington, and the *policy* of the Government, in blending *these officers* who were on the retired list in the contract of *half pay for life* of October 21, 1780.

HALF PAY FOR LIFE TO SUPERNUMERARY OFFICERS, UNDER THE REFORM OF THE ARMY, TO TAKE EFFECT ON THE 1ST JANUARY, 1781.

“ [1780, *October 21.*]—*Resolved*, That the Commander-in-chief, and commanding officer in the Southern department, direct the officers of each State to meet and agree upon the officers for the regiments to be raised by their respective States, from those who incline to continue in service; and where it cannot be done by agreement, to be determined by seniority, and make return of those who are to remain; which is to be transmitted to Congress, together with the names of the officers reduced, who are to be allowed *half pay for life*.

“ That the officers who shall continue in the service to the end of the war shall also be entitled to *half pay during life*, to commence from the time of their reduction.

“ [1780, *November 28.*]—Some doubts having arisen in the minds of the general officers, whether the resolution of the 21st October last, granting half pay for life to the officers who shall remain in service to the end of the war, was meant to extend to them:

“ *Resolved*, That the said half pay for life be extended to all major generals and brigadier generals who shall continue in service to the end of the war.

“ That the resolution of the 21st October was so meant and intended.”

ALLOWANCE DURING LIFE IN LIEU OF HALF PAY TO THE OFFICERS OF THE HOSPITAL DEPARTMENT AND MEDICAL STAFF.

“ [1781, *January 17.*]—Whereas, by the plan for conducting the hospital department, passed in Congress the 30th day of September last, no proper establishment is provided for the officers of the medical staff, after their dismissal from public service; which, considering the custom of other nations, and the late provision made for the officers of the army after the conclusion of the war, they appear to have a just claim to; for remedy whereof, and also for amending several parts of the above-mentioned plan—

“ *Resolved*, That all officers in the hospital department and medical staff hereinafter mentioned, who shall continue in service to the end of the war, or be reduced before that time as supernumeraries, shall be entitled to and receive during life, in lieu of half pay, the following allowance, viz:

“ The director of the hospital, equal to the half pay of a lieutenant colonel.

“ Chief physicians and surgeons of the army and hospital, and hospital physicians and surgeons, purveyor, apothecary, and regimental surgeons, each equal to the half pay of a captain.”

HALF PAY FOR LIFE TO CHAPLAINS.

“ [1781, *May 8.*]—*Resolved*, That the Commander-in-chief be and he is hereby authorized and directed to arrange the brigade chaplains of the several State lines serving with the army, and the commanding general of the Southern army those of the line serving with that army, so as to retain in service no more chaplains of each line than are equal to the number of brigades.

“ That every chaplain deemed and certified to the Board of War to be supernumerary be no longer continued in service, and be entitled to have their depreciation made good, and to the half pay of captains for life.”

RESOLUTION—IN CONGRESS, DECEMBER 31, 1781.

“ *Resolved*, That all officers of the line of the army, below the rank of brigadier general, who do not belong to the line of any particular State or separate corps of the army, and are entitled by acts of Congress to pay and subsistence, shall have the same, with the depreciation of their pay, made good to the first day of January, 1782.

“ *Resolved*, That the Secretary of War be and he is hereby directed to make returns to Congress, on or before the 20th day of January, 1782, of the names and rank of all the officers necessary to be retained in service, that are included in the preceding resolution.

“ *Resolved*, That all officers included in the foregoing description, and whose names shall not be inserted in the returns directed to be made by the preceding resolution, shall be considered as retiring from service on the first day of January, 1782; provided, always, that nothing contained in these resolutions shall be construed so as to prevent or hinder any officer that shall retire as aforesaid from enjoying all the emoluments that he may, upon retiring, be entitled to by any former acts of Congress.”

RESOLUTION—IN CONGRESS, MARCH 8, 1785.

“ *Resolved*, That the officers who retired under the resolve of the 31st of December, 1781, are equally entitled to the *half pay* or commutation, with those officers who retired under the resolves of the 3d and 21st October, 1780.”

The good results which this contract produced may be seen from an extract of a letter from General Washington in 1783, showing the happy consequences resulting from the passage of the resolution of 21st October, 1780, granting half pay, and contrasting the state of the army between the two periods:

“ That, in the critical and perilous moment when the last-mentioned communication was made, there was the utmost danger a dissolution of the army would have taken place, unless measures similar to those recommended had been adopted, will not admit of a doubt. That the adoption of the resolution granting half pay for life has been attended with all the happy consequences I had foretold, so far as respected the good of the service, let the astonishing contrast between the state of the army at this instant and at the former period determine.

“ And that the establishment of funds, and security for the payment of all the just demands of the army, will be the most certain means of preserving the national faith and future tranquillity of this extensive continent, is my decided opinion.

“ By the preceding remarks, it will readily be imagined, that, instead of retracting and reprehending (from further experience and reflection) the mode of compensation so strenuously urged in the enclosures, I am more and more confirmed in the sentiment; and if in the wrong,

‘suffer me to please myself with the grateful delusion. For if, beside
 ‘the simple payment of their wages, a further compensation is not due
 ‘to the sufferings and sacrifices of the officers, then have I been mista-
 ‘ken indeed.

“If the whole army have not merited what a grateful people can
 ‘bestow, then have I been beguiled by prejudice, and built opinion on
 ‘the basis of error.

“If the country should not in the event perform everything which
 ‘has been requested in the late memorials to Congress, then will my
 ‘belief become vain, and the hope that has been excited void of found-
 ‘ation.

“And if (as has been suggested, for the purpose of inflaming their
 ‘passions) the officers of the army are to be the only sufferers by this
 ‘resolution; if, retiring from the field, they are to grow old in poverty,
 ‘wretchedness, and contempt; if they are to wade through the vile mire
 ‘of dependency, and owe the miserable remnant of that life to charity
 ‘which has hitherto been spent in honor, then shall I have learned what
 ‘ingratitude is; then shall I have realized a tale which will embitter
 ‘every moment of my future life. But I am under no such apprehen-
 ‘sions. A country rescued by their arms from impending ruin; will
 ‘never leave unpaid the debt of gratitude.

“G. WASHINGTON.”

Thus it appears that the *half pay for life* was not only promised to those officers by *one resolve* of Congress, of October 21, 1780, but the same was repeated *four times* subsequently.

Those resolves have never been repealed, but are, in point of contracts under them, in full force.

There being no positive repeal of the provisions of the act of 1780, a virtual or implicative repeal of an act is only permitted where there is some repugnance to the last act and the former. (Attorney General, Nov. 17, 1828.) Both acts of 1780 and 1783 recognise the *obligation*; the latter is only a *proposition* in relation to the *mode of payment*.

This position is sustained by the resolve of January 26, 1784. In answer to applications for half pay, Congress resolved “that half pay
 ‘cannot be allowed to any officer, or to any *class* or denomination of
 ‘officers, to whom it has not heretofore been *expressly promised*”—still receiving applications under the law of October 21, 1780, and recognising the law, but rejecting the claims only because they did not come within the provisions of the law of 1780. The law is again recognised as such by the act of the 8th of March, 1785.

Many of the officers, up to that time, had already given five years service, and expended their fortunes, to carry on the war. It was *after* the Government had become so utterly bankrupt, at the earnest request of Washington, that the promise of seven years half pay was *increased* to that of half pay *during life*; and such had become the depreciation of the credit of the Government, that a *promise* of *full pay* would have appeared more compatible with the condition of the public finances, than that of half pay for life.

It is admitted that Congress had the power to make contracts; that the contract, guarantying to *each* officer half pay during life, was made during the time the Government was *utterly insolvent*. After it had failed—at a time when no promises of the Government were worth more than two and half dollars to the hundred, when Congress could not, upon any principles of honor, promise the officers any considerable *amount in gross*—it could only, during that great exigency, *pledge the honor* of the nation, that if they would serve to the end of the war, conquer a peace, *each* of them should be entitled to *half pay during life*—not to pay them in the same depreciated paper in which they had been paid. And this became a vested right, which could not be varied, rescinded, or impaired, by any subsequent act of legislation; nor could *any other* act of Congress be substituted in its place, without the assent of the officers individually.

In discussing the merits of these claims, it is well to consider their progress, and the many considerations they contained. They were the deliberate and voluntary acts of Government, founded in justice, equity, public policy, and public exigency. They embraced the results of three previous promises, which constituted one continuous consideration: 1st. Grants of land, before the failure of the Government, September 16, 1776. 2d. Seven years half pay, May 15, 1778. 3d. Seven years half pay, in specie or current money, October 3d, 1780, payable to the supernumerary officers, which was after the Government had failed. 4th. While the Government was thus hopelessly insolvent, and could not discharge the seven years half pay, it was during this insolvency of the Government, while the promises of the Government were by a permanent law worth only two and a half dollars to the hundred, that all these unredeemed promises were all blended in the contract of October 21, 1780—all finally resting upon the faith of the nation, and the success of the efforts and perseverance of the officers. This contract, therefore, was not founded on the depreciated currency. It was virtually the first mortgage of the real and personal effects of the Government, and therefore has, or should have, a preference to all other claims.

The claimants say, and the facts find, that the Government continued to remain insolvent during the whole period of the war, and failed to supply the officers with good and sufficient food, whereby they were obliged to expend their own private fortunes; that neither the *old* nor the *new* Confederacy has ever paid the large sums advanced, arrears of pay, or their half pay, promised under the resolve of October 21, 1780; that the provisional articles of peace between the United States and Great Britain were signed November 30, 1782; the treaty between France and Great Britain, on which the efficacy of those articles were conditioned, was executed on the 20th January, 1783; and the definitive treaty of peace was signed at Paris, September 3, 1783, and ratified by Congress, January 14, 1784.

That notwithstanding it was well known to Congress that a peace had been obtained, the Government being unable to pay to the soldiers and officers specie or current money, sufficient to defray their expenses to their destitute homes, for that reason could not disband the army;

that they postponed their declaration of the cessation of hostilities until the 11th day of April, and on the 23d of April, 1783, Congress declared that the time the men engaged to serve, "during the war," did not expire until the ratification of the treaty of peace, but authorized the Commander-in-chief to grant furloughs or discharges, which was a mere *expedient*, founded on that necessity, and postponed until the 14th of January, 1784; that Congress, by resolves of May 25, June 11, and September 26, 1783, directed parts of the army to be furloughed, and, by their proclamation of the 18th of October following, discharged absolutely, after the 3d November, 1783, such *parts* of the Federal army as had been furloughed by the several previous acts; that in this manner this patriotic army was disbanded, and, for the want of means, sent penniless to their homes, without the certificates of service.

There is, however, conclusive evidence that the officers and soldiers discharged their duty nobly, and during all that long struggle submitted to sufferings and deprivations with a patience and patriotism never before exhibited by any race of people. *They performed their part of the contract*, almost without their pay, and often without food.

Their names were duly returned to the War Department. The amount of their annual pay was a *fixed sum*; they had nothing further to do; they became entitled to grants of land, and their annual half pay during life.

Their claim became a matter of record. It required no further *presentation*. It was, in law, *always presented*; and there it stands, *a life estate—a vested right*—that could not be affected by any subsequent legislation.

In order to encourage their disappointed hopes, and offer some compensation for the inevitable delay of payment, which the impoverished treasury could not fail to predict, on the 3d of June, 1784, Congress passed the following *resolution* :

"That an *interest* of six per cent. *per annum* shall be allowed to all 'creditors of the United States, for supplies furnished, or services 'done, from the time the payment became due.'"

This extended to all their *arrears of pay* long due, as well as to their half pay. Chief Justice Gilchrist, in a recent decision, in alluding to this resolve, says :

"No language could be more express or free from doubt than this. 'The resolution was passed, from a feeling that it was just and right 'that interest should be paid from the time the half pay became due; 'and it was a voluntary contract on the part of the United States, 'constituting a legal claim against them, which no subsequent legislation could release, without the consent of the other party.' "It 'may be added, that up to the year 1837, there was paid interest on '1,510 claims of widows and orphans, and claims of officers for personal services—the statute of limitation as to such claims having 'been suspended.'"

The claimants further say, that section 1 of the 6th article of the Constitution provides, "That all *debts* contracted and *engagements* 'entered into before the adoption of this Constitution shall be as valid

‘ against the United States, under *this* Constitution, as under the Confederation.”

2. “ *This Constitution*, and the *laws* of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, *shall be the supreme law* of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”

3. “ The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution.”

The act of Congress of March 22, 1783, *admits* the claim of the officers which accrued under the resolve of October 21, 1780, for half pay, to have been such a *debt and engagement* as is contemplated by the Constitution; “ for which (says the resolve) the *faith of the United States hath been pledged*; ” “ whose services and sufferings have so just a title to the approbation and rewards of their country.”

Here, then, as early as 1783, Congress declared those claims to be founded, *not upon a gratuity*, but on a solemn *contract*, made between the Government and the officers, wherein they are declared as *legal creditors* of the Government. Therefore, as the honor of the country was “ pledged ” for the fulfilment of the contract, justice would seem to demand the inquiry.

At what time and in what way were these debts paid? When and in what way has the *public faith*, thus “ *pledged*,” ever been “ redeemed? ”

It is sometimes alleged that the contract for half pay for life was changed to that of *five years’ full pay*, by the following resolve of 22d March, 1783:

RESOLUTION OF MARCH 22, 1783.

“ On the report of a committee, consisting of Mr. Hamilton, Mr. Dyer, and Mr. Bedford, to whom was referred a motion of Mr. Dyer, together with the memorial of the officers of the army, and the report of the committee thereon, Congress came to the following resolutions:

“ 1. Whereas the officers of the several lines under the immediate command of his Excellency General Washington, did, by their late memorial, transmitted by their committee, represent to Congress that the half pay granted by sundry resolutions was regarded in an unfavorable light by the citizens of *some* of these States, who would prefer a compensation for a limited term of years, or by a sum *in gross*, to an establishment for life; and did, on that account, solicit a commutation of their half pay for an equivalent in one of the two modes above mentioned, in order to remove all subject of dissatisfaction from the minds of *their fellow-citizens*: And whereas Congress are desirous as well of gratifying the reasonable expectations of the officers of the army as removing all objections which may exist in any part of the United States to the *principle* of the half pay establishment, for which the faith of the United States hath been pledged; persuaded that those objections can only arise from the *nature* of the compensation, not

‘ from any indisposition to compensate those whose services, sacrifices, and sufferings, have so just a title to the approbation and rewards of their country :

“2. *Therefore, resolved*, That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five years’ full pay in money or securities on interest at six per cent. per annum, as Congress shall find most convenient, instead of the half pay promised for life by the resolution of the 21st day of October, 1780 ; the said *securities* to be such as shall be given to *other creditors* of the United States ; provided it be at the option of the lines of the respective States, *and not of officers, individually*, in those lines, to *accept* or *refuse* the same ; and provided, also, that their election shall be signified to Congress, through the Commander-in-chief, from the lines under his immediate command, within two months, and through the commanding officer of the Southern army, from those under his command, within six months from the date of this resolution :

“3. The same commutation shall extend to the corps not belonging to the lines of particular States, and who are entitled to half pay for life, as aforesaid ; the acceptance or refusal to be determined by corps, and to be signified in the same manner, and within the same time, as above mentioned :

“4. That all officers belonging to the hospital department, who are entitled to half pay by the resolution of the 17th day of January, 1781, may collectively agree to accept or refuse the aforesaid commutation, signifying the same through the Commander-in-chief, within six months from this time ; that such officers as have retired at different periods, entitled to half pay for life, may, collectively, in each State of which they are inhabitants, accept or refuse the same ; their acceptance or refusal to be signified by agents authorized for that purpose, within six months from this period ; that, with respect to such retiring officers, the commutation, if accepted by them, shall be in lieu of whatever may be now due to them since the time of their retiring from service, as well as of what might hereafter become due ; and that so soon as their acceptance shall be signified, the superintendent of finance be and he is hereby directed to take measures for the settlement of their accounts accordingly, and to issue to them certificates, bearing interest at six per cent. ; that all officers entitled to half pay for life, not included in the preceding resolution, may also collectively agree to accept or refuse the aforesaid commutation, signifying the same within six months from this time.”

Half pay forbidden, except to those officers to whom it is heretofore promised.

RESOLUTION—IN CONGRESS, JANUARY 26, 1784.

“On the report of a committee, consisting of Mr. Williamson, Mr. Tilton, and Mr. Monroe, to whom were referred a memorial of Joseph Ward, and a petition of R. Forthingham,

“*Resolved*, That *half pay* cannot be allowed to any officer, or to any class or denomination of officers, to whom it has not heretofore been expressly promised.”

Certain officers entitled to half pay or commutation.

RESOLUTION—IN CONGRESS, MARCH 8, 1785.

“*Resolved*, That the officers who retired under the resolve of the 31st of December, 1781, are equally entitled to the half pay or commutation with those officers who retired under the resolves of the 3d and 21st October, 1780.”

It is also alleged that certain commutation certificates of the Paymaster General, which were sent to the officers, were a valid accord and satisfaction that they were a fair equivalent for the half pay for life.

But the *claimants* say that the resolve of 1783 was passed *after* the peace—*after* the contract of 1780 had been fulfilled on the part of the officers; that it was a mere proposition to compromise a debt which already existed, that they never gave their assent to the *proposition*, and that it did *not* repeal the act of 1780, is admitted by the subsequent resolve of March 8, 1785, in which the right to *half pay* is expressly declared to be due to certain other officers; and they say that the resolve of 1783, or any acts under it, ought not to have any binding force upon them—

1. Because the resolve of 1783 expressly excludes the officers individually from expressing their dissent to the same; that it was a proposition of expediency, founded entirely upon the imperative necessities of the Government, it being well known to Congress that the Government had no power to comply with either of its conditions, viz: to pay *specie* or *give security*, and was finally *repudiated* by the old and new Government, and therefore could not be of any binding force on the officers, *even if they had assented to all of the propositions*. That those commutation certificates were payable with *interest annually*. The omission to pay the interest annually was a repudiation of the conditions, not only of the *certificates*, but also of the *resolve of 1783*, upon which they were issued.

2. That the certificates sent to the officers were a part of the resolve of 1783, as much so as if a copy of the same had been attached to each of them; that they were not *money* or *security* which would command “six per cent. per annum,” and of no more value than the depreciated certificates which they then held.

3. That the resolves of 18th March, 18th April, and 28th of June, 1780, were in full force, by which *all the certificates* of the Government, which had issued, or which *should thereafter issue*, are declared to be of no more value, and to be discharged at the rate of forty dollars for one dollar in specie. That the certificates of the Government constituted the principal currency of the whole country, and passed from hand to hand at the rate of \$40 for one in specie, and continued so during all the period of the old Confederacy. That the new Government could not in justice to the officers allow to strangers, who had taken them at their market value, any more or greater per cent. than the law had prescribed, viz: two and a half dollars to the hundred. The certificates sent for a captain’s pay for twenty-four hundred dollars, was, in fact, by positive law, a certificate for only sixty dollars, just as much so as if a copy of the laws of March, April, or June, 1780, had been attached to each certificate.

It can be no defence of the Government to assign as a reason for *imposing* those certificates as payment to the officers, that the Government paid to *other creditors* in the same valueless certificates. Those certificates can be plead in satisfaction of the half-pay claim for only so much and no more than they were actually worth at the *time they issued*, aside from any of the inducements, by necessities or otherwise, of the officers. No individual can set up his own poverty, negligence, or wrong, as an excuse for the non-payment of his legal obligations; much less can the Government, who is bound to protect its citizens against wrong and injustice.

4. The petition of the *small number* of officers, being less than thirty, could not in any way impair the rights of the others who did not give their *assent* to it.

5. That the resolve itself is utterly at variance with the spirit and object of the request even of those who signed it. They never intended to release a larger claim for a smaller one, and receive the same depreciated paper of the Government as *money* or *security* which they then held for the *full amount*.

6. That the certificates issued by the Paymaster General, and *sent to the officers*, were utterly inconsistent with, and directly opposed to, the *terms and conditions* of the *resolve itself*, and therefore ought not to impair the rights of the officers under the resolve of 1780.

7. By thus *increasing the amount* of this repudiated, depreciated paper, it caused the certificates which they then already held to be depressed in value still more, and thereby to have been *a loss to the officers*, instead of any benefit; and although the Government continued hopelessly insolvent, it would not permit the officers to send back these depreciated certificates, and confined that right to the invalid corps of officers.

8. Congress resolved, as late as September 14, 1788, "That the *invalid officers* be permitted to return the *amount* of their commutation in *other securities* of the United States, where they have parted *with their own*, provided the same shall be of the same amount and *bearing the same interest*." Thus proving that those which issued to the officers were of no more value than any other of the Government securities after a period of five years. This law was unjust, in not extending to all the officers the same privilege.

9. That the rights of the officers ought not to be impaired by the *reception or detention* of those certificates which were *sent to them* by the Paymaster General, *because* they were also given for arrears of pay, and especially because they embraced the evidence of their service and the completion of their part of the contract. So far they were of some value to the officers; but whether they had been secured and brought within the resolve, could not at that time have been known to the officers; they could only know that the resolve upon which they were founded required *specie* or *security*; and if by the implication of law the Government was entitled to a reasonable time to make that security, it was given. It was not in the power of the officers to have compelled the Government to have received them, if they had proposed to return them. The presumption is, that they were not permitted to return

them, as those of the invalid corps were obliged to obtain a special law for that object. That their *retention* was not and could not have been any injury to the Government, inasmuch as their value was fixed by law at two dollars and fifty cents to the hundred. By this law, the certificates to a captain were of the value of sixty dollars only.

It will be seen by the Funding Act of August 4, 1790, that the new Government claimed the right of paying only about sixty per cent. of the amount of these certificates, by instalments, during a space of time of about forty years, in order, says the act, to conform "to the (then) present circumstances of the United States."

FUNDING ACT OF AUGUST 4, 1790.

The *first section* of the act reserves out of the proceeds of the revenue from customs, &c., \$600,000 a year for the support of Government, and appropriates the residue for the payment of interest on *debts* and *loans*. The act then proceeds thus:

"And as new loans are and will be necessary for the payment of the 'aforesaid *arrears of interest* and the *instalments* of the principal of 'said foreign debt, due and growing due, and may also be found expedient in effecting an entire alteration in the state of the same."

Wherefore, the *second section* authorizes the President to cause \$12,000,000 to be borrowed, *part* to pay arrears and instalments of the *foreign debt*, and to make other contracts relating to the *foreign debt*. The act then proceeds in relation to the *domestic debt* thus:

"And whereas it is desirable to adapt the nature of the provision to 'be made for the *domestic debt* to the present circumstances of the 'United States, as far as it shall be found practicable, consistently with 'good faith and the rights of the creditors, which can only be done by 'a *voluntary loan* on their part."

The *third section* then authorizes a loan to be proposed to the full amount of the "*domestic debt*," by opening books for receiving subscriptions, by a commissioner of loans, to be appointed in each of the States; and that the sums which shall be subscribed thereto be payable in "certificates," issued for the said debt according to their specie value; which said certificates are designated and described as follows:

Description of certificates receivable for sums described.

"1. The 'certificates' issued by the Register of the Treasury.

"2. Those issued by the Commissioners of Loans in the several States, including 'certificates' given pursuant to the act of Congress of the 2d January, 1779, for *bills of credit* of the several emissions of the 20th May, 1777, and of the 11th April, 1778.

"3. Those issued by the Commissioners for the adjustment of the 'accounts of the quartermaster, commissary, hospital, clothing, and 'marine departments.

"4. Those issued by the Commissioners for the adjustment of accounts in the respective States.

"5. Those issued by the late and present Paymaster General, or 'Commissioner of army accounts.

“6. Those issued for the payment of *interest*, commonly called *interests of interest*.

“7. And the ‘bills of credit’ issued by the authority of the United States in Congress assembled, at the rate of one hundred dollars in ‘the said bills for one dollar in specie.’”

The *fourth* section designates and describes the *three new certificates* which the subscribers to the said loans shall be entitled to receive—upon all certificates bearing interest the same is to be received up to the last day of December, 1790.

That for the whole or any part of any sum subscribed to the said loan, by any person or persons, or body politic, which shall be paid in the *principal* of the said *domestic debt*, the subscriber or subscribers shall be entitled to a certificate, purporting that the United States owe to the holder or holders thereof, his, her, or their assigns, a sum to be expressed therein, equal to *two-thirds* of the sum so paid, bearing an interest of six per centum per annum, payable quarter yearly, and subject to redemption by payments not exceeding in one year in amount of principal and interest the *proportion* of eight dollars upon a hundred of the sum mentioned in said certificate. A second certificate for one-third, payable as aforesaid, bearing interest *after* 1800. A third certificate for the amount of the *interest*, bearing an interest at *three per centum* per annum, payable quarter yearly; provided it shall not be understood that the United States shall be bound or obliged to redeem in the proportion aforesaid; but it shall be understood only that they have a right to do so.

Thus, after this *second* proposition made to the officers had remained entirely unprovided for during eight years, and no portion of the principal or *interest*, which was *payable annually*, had been paid, *these* certificates were finally *scaled again*, and given up, by a subscription to a loan for the funding of the *domestic debt*, at the rate of one hundred dollars for one, and a *new* proposition was made for the issuing of *new certificates* to the holders, (as few of them were in the hands of the officers at that time,) payable by annual instalments of eight dollars to the hundred, making a deduction of interest nearly equal to the principal. In this last *proposition*, Congress was more cautious, and *reserved the right* of paying this proportion of the debt or not.

Therefore the claimants urge that, inasmuch as the records and acts of Congress show that *none* of the *terms* and *conditions* of the resolve of March 22, 1783 were ever complied with, but *repudiated*, and the certificates scaled by the *new* Government, it is not necessary to inquire whether the officers ever assented to the same or not; that the reception and detention of those certificates did not affect or in any way impair the rights of the officers under the original contract.

The only question remaining for the consideration of Congress would appear to be, what amount, if anything, ought the claimants to allow to the Government for those repudiated and depreciated certificates? The laws of March, April, and June, of 1780, established their value to be two and a half dollars to the hundred. Seven years afterward, they were funded at one hundred for one. In order, however, to relieve these

claims from any misapprehension, the claimants do not ask for the redemption of those certificates, nor the losses they sustained on the money of the Government for *arrears of pay and supplies furnished*—all these amounting to much more than their claim for half pay, which are all suspended. As it would be impossible, in the attempt to redeem the public money, to do *justice to the original payees*, while the public currency was one hundred for one, the *merchant* received it and passed it at that rate, and could not lose on the transaction.

But the claimants say, the contract for half pay was made with the Government *after it had utterly failed*, and *after* it had long been unable to meet its engagements; *after* its most sacred debts had been sealed by the Government, and *after a permanent law* had made the certificates of the Government the currency of the country at two dollars and fifty cents to the hundred. It was at this dark time in the history of the Government, when the contract of 1780 was made with the officers. They did not expect any pay for many years; they looked to the result of the experiment of a republican form of government; they staked their services, and all the money, provisions, and clothing, they could raise, to sustain and keep on the field the soldiers of their respective corps; they looked to the *honor* of the country even for their *half pay*. This contract was viewed to be entitled to a higher consideration of the Government to those of any other claims whatever. It really was, as the resolve of March 22, 1783 declared them to have been, an obligation “for which the faith of the nation hath been pledged”—presenting a just distinction over all the claims, which runs through all the subsequent acts of Congress. Therefore, a payment of two and a half dollars on the hundred could not be an accord and satisfaction for a hundred dollars. Payment of sixty dollars in this paper was not a payment of \$2,400—that being the value of captain’s certificate by *law*. The contract was founded upon *past* services, as well as those rendered *subsequently*. Fortunes of the officers were given to the country; their children deprived of *an education*, as well as their inheritance. The patience with which the officers submitted to all the delay on the part of the Government, in the omission and inability to respond to this solemn obligation, and especially the readiness with which they *again* entered the service of the army, makes still more brilliant every page of their history, and renders their memory still more dear to every American heart. Many of the survivors were on every battle field during all the *subsequent wars*; a large number of them were killed at that destructive battle under General St. Clair at the sources of the Maumee, on the 6th November, 1792, where of our army 682 were killed, and 264 were wounded, at that single battle. They not only gave more than seven years’ service to establish this Government, but many of them afterwards gave their lives in its defence and support. Why then, it may be asked, if these claims embraced such *important considerations*, have they been suffered to remain so long unpaid?

There have been many circumstances attending the progress of the Government which have contributed to this result. A war threatened with France in 1793; the entire *inability* of the Government to pay its debts up to 1800; after that time came the *non-intercourse act*, which

destroyed our commerce ; then came the war with England, which continued from 1812 to 1815, creating a very heavy *additional indebtedness* of the Government. The war of 1812 brought into the field a new and large number of claimants. These, added to a vast number of older claims, were sufficient to deter Congress, and almost to defy investigation, and rendered applications of claimants, with any prospect of a decision, a most forlorn hope. All of the committees of Congress have united in reporting that nothing which was done under the resolve of 1783 impaired the rights of those officers to half pay under the resolve of October 21, 1780. In 1810, 1818, 1819, 1826, 1828, and 1838, reports were made recommending their payment ; but no *general provision* was made on behalf of those claims until the passage of the act of May 15, 1828 :

“ AN ACT for the relief of certain surviving officers and soldiers of the Army of the Revolution.

“ SEC. 1. *Be it enacted, &c.*, That each of the surviving officers of the army of the Revolution, in the continental line, who was entitled to half pay by the resolve of October twenty-first, seventeen hundred and eighty, be authorized to receive, out of any money in the Treasury not otherwise appropriated, the amount of his full pay in said line, according to his rank in the line, to begin on the third of March, one thousand eight hundred and twenty-six, and to continue during his natural life : *Provided*, That, under this act, no officer shall be entitled to receive a larger sum than the full pay of a captain in said line.

“ SEC. 2. *And be it further enacted*, That, whenever any of said officers has received money of the United States, as a pensioner, since the third day of March, one thousand eight hundred and twenty-six, aforesaid, the sum so received shall be deducted from what said officer would otherwise be entitled to under the first section of this act ; and every pension to which said officer is now entitled shall cease after the passage of this act.

“ SEC. 3. *And be it further enacted*, That every surviving non-commissioned officer, musician, or private, in said army, who enlisted therein for and during the war, and continued in service until its termination, and thereby became entitled to receive a reward of eighty dollars, under a resolve of Congress passed May fifteenth, seventeen hundred and eighty-eight, shall be entitled to receive his full monthly pay in said service, out of any money in the Treasury not otherwise appropriated ; to begin on the third day of March, one thousand eight hundred and twenty-six, and to continue during his natural life : *Provided*, That no non-commissioned officer, musician, or private, in said army, who is now on the pension list of the United States, shall be entitled to the benefits of this act.

“ SEC. 4. *And be it further enacted*, That the pay allowed by this act shall, under the direction of the Secretary of the Treasury, be paid to the officer or soldier entitled thereto, or to their authorized attorney, at such places and days as said Secretary may direct ; and that no foreign officer shall be entitled to said pay, nor shall any officer or soldier receive the same, until he furnish to said Secretary satisfac-

' tory evidence that he is entitled to the same in conformity to the provisions of this act; and pay allowed by this act shall not in any way be transferable, or liable to attachment, levy, or seizure, by any legal process whatever, but shall inure wholly to the personal benefit of the officer or soldier entitled to the same by this act.

"SEC. 5. *And be it further enacted*, That so much of said pay as accrued by the provisions of this act before the third day of March, eighteen hundred and twenty-eight, shall be paid to the officers and soldiers entitled to the same, as soon as may be, in the manner and under the provisions before mentioned; and the pay which shall accrue after said day shall be paid semi-annually, in like manner, and under the same provisions."

[Approved May 15, 1828.]

Attorney General Butler, in a very able and very elaborate opinion of February 3, 1834, shows very conclusively that the act of 1828 was to be regarded as an *acknowledgment* of a debt equitably due, than as conferring gratuitous pensions.

By this act, the claimants, or those who had survived, were acknowledged as *creditors* of the Government; and the second section declares, that any *pension* to which said officer was entitled was to *cease* after the passage of this act.

It will be seen that the act allows *full pay* to all the officers, not to exceed that of captain, *during life*, and also extends back to March 3, 1786. While it admits the efficacy of the contract of 1780, by allowing full pay instead of half pay, and also extending back over two years, (equal to four years of half pay,) at the same time, in honor to that Congress, it imposes no *condition* that such payment shall be in full for said contract; and the words of this act make the sum payable only to such as "was entitled to half pay by the resolve of October 21, 1780." The presumption is, that it was designed, by full pay instead of half pay, gradually to extinguish the claim. More especially are we led to this conclusion, from the fact, that the *committees* of Congress have recommended their annual pay for the *future*, and the issues of Government scrip for the *past*.

This view is further confirmed by the act of Congress of the 2d of March, 1853, which expressly declares that any applicant "for a pension, under the act of 7th January, 1832, *in pursuance of contracts* with the Government, made *previous* to the 11th day of April, 1783, and continued in service until after that, it shall be the duty of the Secretary of War to compute the period of any such service from the time he entered the army until the date of the definitive treaty of peace, and to allow him a pension accordingly." This is an act and a legislative construction, which was made subsequent to either that of 1828 or 1832—each of which recognises the contract of 1780, and neither asks for any *deduction* for the *commutation certificates*, or otherwise. The act of 1828 was evidently intended to restore the survivors of those officers to their *original rights*, and to become a gradual draft on the treasury for so much of their claim, leaving to the *future* action of Congress to provide, as had been recommended by many of the committees, for the *arrearages*. If, however, any doubt

could remain of the correctness of this exposition, they all disappear, and the principle is established beyond all question, in the passage of the many *subsequent* acts of Congress to that of 1828, all of which were in behalf of the *same officers* who had already received up to that time equal to fourteen years of half pay, by seven years full pay, under the act of 1828, in the name of Alexander Garden, Caleb Starke, Mountjoy Bailey, James Bennett, Edward Brooke, Thomas Triplett, James Gibbon, Ephraim Whiteacher, Isaac Lay, and *many others*, by several acts. Each received the full amount of five years commutation full pay in specie, with interest. Having admitted the claim, and restored them to the position of payees and creditors of the Government, it made no difference whether it was received as commutation or otherwise.

In further confirmation of this view for half pay, reference may be had to the action of Congress in behalf of the officers of the State line of Virginia. The promises of half pay by Virginia to her State line are in the *same words* as those of the United States to the Continental line.

The United States assumed the payment of those military claims for which Virginia *was liable*, but not otherwise.

The act of Congress of July 5, 1832, provided for the settlement and payment of the same. The Secretary of the Treasury of the United States paid the principal and *interest* upon each year's half pay, as the same became due, on all those claims which were *unsettled*, as well as those on which judgments had been rendered against Virginia by her own courts—thus giving another legislative construction and declaration of the extent of the half-pay claims of the United States, as well as those of Virginia.

Congress has often recognised the claim in the name of the heirs of the deceased officer, and paid the full amount, *with interest*, to them, in the form of commutation, after the father had received full pay for many years, under the act of 1828. James Withers, after receiving twelve years full pay under this act, then received the full amount of his commutation of five years half pay.

The claimants say that the act of 1828, and the passage of numerous special acts of Congress in behalf of a large number of individual officers of the same class of creditors, are a legislative construction and declaration, and sufficient admission in behalf of all the other claimants under the same contract, and binding upon Congress, according to the decisions of the Supreme Court and Secretaries of War.

The act of 1828, and the many subsequent special acts of Congress, being *subsequent* to any of the acts of limitations, established the claim of the heirs of the deceased officer, as much as it secured it to those who survived.

If, however, there could have been any doubt remaining in relation to the legality and equity of those claims, the more *recent* decision of the Court of Claims, confirmed by the passage of an act for payment of the half pay for life, together with the interest, would seem to settle the question beyond all controversy. It being the *judicial* and legislative construction and declaration of the law-making and law-expounding power, should be considered as binding on all parties.

THOMAS H. BAIRD *vs.* THE UNITED STATES.

The case referred to is that of Thomas H. Baird, as a son of Absalom Baird, who was a commissioned surgeon in the army of the Revolution, and in that capacity was entitled by law to half pay for life and other emoluments.

“The proceedings (says Chief Justice Gilchrist) in relation to the claim for commutation do not appear to be very material in relation to the case in the present position. On the 23d March, 1783, a resolution was passed, providing that the officers and others entitled to half pay for life ‘shall be entitled to receive at the end of the war their five years full pay, in lieu of half pay for life, in money—that is, *specie*—or in *securities on interest*, as Congress shall find most convenient.’ On the 28th of January, 1794, Dr. Baird applied for the benefit of this provision, but died in the year 1806—having, as is said in the report of the Committee of Claims of the 5th February, 1855, ‘become wearied and disheartened with delay.’ In the year 1818, his son, Thomas H. Baird, having become of age, petitioned Congress for relief; and on the 3d of March, 1855, the committee reported that ‘Dr. Absalom Baird was entitled to the benefit of the act of the 17th of January, 1781, extending the grant of half pay for life to the officers of the hospital department and medical staff.’ No action was had upon the resolution until the 22d of June, 1836, when an act was passed, granting five years full pay as commutation, under the resolution of 1783, but *without interest*.”

“Now, this claim does not depend for its validity upon any admission contained in the act of 1836. But the Congress which passed that act must have considered that Dr. Baird had a legal claim of some kind, otherwise their conduct in granting him five years full pay was wholly indefensible. It is, however, relied upon as a final settlement of the claim. Upon any principle known to the law, this position is wholly untenable. It is easy enough to declare, *ex cathedra*, that it was a final settlement. But it is extremely difficult to imagine, in the absence of all evidence, what reasons can be urged for holding that the payment of a sum of money is of itself a discharge of a debt for a larger amount. A plea of payment of a small sum in satisfaction of a larger is bad, even after verdict. (2 Parsons on Contracts, 130, and notes.) This principle is familiar to every lawyer. A debt may be paid by a fair and well-understood compromise, carried faithfully into effect. *But here* there was no compromise. If it were a case between individuals, no one would dream of applying such a term to it. The United States are either bound by *principles* of law applicable to them, or they are not so bound. If they are not bound, there is an end of the discussion, for then all reasoning is fruitless. If they are bound by the principles of law, *it is impossible* to regard the payment of five years full pay, without interest, as a satisfaction of this claim. There is no evidence that either party so regarded it; and unless we set at defiance every principle of law, we cannot hold that one party to a contract, without the consent of the other, can discharge his debt by the payment of a smaller sum than the amount

‘ due.” “The amount of Dr. Baird’s half pay was two hundred and forty dollars per annum, payable at the end of every year. He was entitled to this sum up to the 27th day of October, 1805, the day of his death, *and interest* on the payments as they became due, according to the express provisions of the resolutions of June 3, 1784.”

The Court of Claims therefore reported a bill for the relief of THOMAS H. BAIRD.

“ *Be it enacted, &c.*, That the Secretary of the Treasury be and hereby is directed, out of any money in the Treasury not otherwise appropriated, to pay to Thomas H. Baird, administrator of the estate of Absalom Baird, a commissioned surgeon in the army of the Revolution, the sum of ten thousand and seventy-four dollars and eighty-four cents, with interest thereon from the 27th day of October, 1805, to the 1st day of June, 1856, deducting therefrom the sum of twenty-four hundred dollars, paid under the act of June 23, 1836.”

This bill, as presented by the Court of Claims, was reported, and passed both Houses by large majorities, without amendment. The act was duly approved, and the amount paid at the Treasury.

This case embraced all the principles which are involved in all of the *same class of claims*, and, by all the rules of justice which are known to the highest judicial tribunals, must be applicable, and is a judicial and legislative construction and declaration of the rights of all the other claimants, founded upon the same contract, and governed by the same rules of evidence. Here is the decision of an able court of the Government in behalf of the half-pay claims, and this decision has been confirmed by a solemn act of the 34th Congress. This decision and act of Congress is one of “the laws of the United States, made in pursuance of the *Constitution*, under the authority of the United States,” which is declared by that Constitution “shall be the supreme law of the land;” and the suspension of the acts of limitation of the land also extends to the half-pay portion of the contract of October 21, 1780.

In addition to this case and those before referred to, are the many laws of Congress in behalf of those officers in the *grants of land*; for it will be remembered that the contract to the officers who served to the end of the war embraced not only the promise of *money* to the amount of half of their annual pay, but also *grants of land*, which was equally binding on the Government and connected with the payment of money, in the same manner as the bond of one individual to another, for the payment of one hundred dollars in money, and to convey him one hundred acres of land, the *tender* or payment of the one would not be a discharge of the other condition; any act of limitation in relation to the one, or renewal of the promise of the one, would equally affect the other. If, then, the treasury was empty, and the Government could not pay the *money* portion of the contract, having large tracts of land, it becomes interesting to know how far the Government has complied with this portion of the contract; for it is a well-settled principle of law, that where no time is named for the conveyance of land, the law will give the party only a reasonable time to make the conveyance.

The delay on the part of the Government must in *this particular* strike every one with surprise.

The ordinance of Congress for ascertaining the mode of disposing of the public lands in the Western territory ; the resolve of May 20, 1785, refers to the *promises* of land by the resolves of September 16, 1776, 12th August, 1780, 30th September, 1780, and ordained that the Secretary of War ascertain who are the objects of said resolutions and engagements, and the *quantity of land* to which such person or their *representatives* are respectively entitled ; and to cause townships, &c., in such manner as shall be deemed impartial distribution, &c.

A supplementary ordinance of Congress of July 9, 1788, by which it was further ordained that the Secretary of War issue warrants for bounties of land to the several officers and soldiers who may be entitled, &c., their respective assigns, or their legal representatives, certifying therein the rank or station of each officer, and the line, regiment, corps, and company, in which the officer or soldier served.

But, strange as it may seem, *prior* to the act of Congress of the first day of March, 1800, no locations of military land warrants granted by the United States could be made, unless such location embraced an entire quarter township of four thousand acres ; consequently, no officer or soldier of the continental army could effect a location of the quantity of land embraced by the warrant he received for his services, unless he united with other officers and soldiers, or the holders of such warrants. These evils continued until the act of March 1, 1800.

What appears still more strange is, that the Government, after having taken *seventeen years* before being ready to deliver to each officer his separate portion of land, gave to the claimants only from the 16th of March, 1800, to the 1st day of January, 1802, in which to apply for their warrant ; establishing a ratio between *power* and *right* of seventeen to two.

Subsequently, however, to the *limitation* fixed by the act of 1802, Congress, by successive acts, passed at intervals from two to five years, continued to authorize the issuing of military land warrants to the officers and soldiers of the Continental lines, whose claims for bounty land remained unsatisfied—the *last* of which acts of extension was passed February 8, 1854, which extended the time for discharging this portion of the contract, up to the 26th of June, 1858.

The claimants therefore urge, that the half pay was only an enlargement of the money portion of the contract, in “addition” to the land. By the act of October 3, 1780, the land is declared to be in “addition” to the seven years half pay in specie or current money ; that the two considerations were blended in one and the same entire contract ; that the many laws of Congress, on the suspension of acts of limitation, the renewal, acknowledgment, promise, or extension of time of one portion of the contract, applies with equal force to all the others, including the half pay as well as the land. If this position be correct, the whole and entire contract is carried forward to the 26th of June, 1858.

The promise of the land was also a vested right, and could not be abrogated or impaired by any subsequent legislation.

They further urge, that in all cases between *individuals*, an acknowledgment and promise to pay to *one* of ever so many joint and several payees to a note or contract, is an acknowledgment, renewal, and

promise to pay, to each and all the other payees their proportion, and will take the claim out of the statute of limitations; that the general act of May 15, 1828, took all the claims out of the statute of limitations.

It is admitted the resolves of October 21, 1780, October 3, 1780, September 16, 1776, constituted a solemn contract between the Government and the several officers, for land and half pay due to each and all of them (the act of October 3, 1780, declares the land to be "in addition" to the half pay) whose claim was once brought within the resolve, by having perfected the evidence of service, and thereby consummated the contract. This was done, in most of the cases, by the ordinances of May 20, 1785, and July 9, 1788, where the Secretary of War was to determine who are entitled to land, "certifying therein the rank or station of each officer, and the line, regiment, corps, and company, in which the officer and soldier served." The evidence of service would also appear in the record of the commutation certificates. In the absence of the record of the evidence of service, as prescribed for the land portion of the consideration, and also the record of the commutation certificates, the Court of Claims, it would seem, decided, in the case of *E. B. Chamberlain and others vs. the United States*, hereto annexed, that it came within and was barred by the statute of limitations of November 2, 1785, July 23, 1787, and February 12, 1793; also, administrator of Armabel Chandolet *vs. the United States*; also, administrator of Louis Marnay *vs. the United States*.

Joseph Stohely et al. vs. the United States; *Jeremiah M. Williams vs. the same*. The Court, it would seem, did not consider in this case the important connection of the land and the money portions of the contract for half pay, as the several *considerations* are blended, and constitute one entire contract.

The act of October 3, 1780, expressly declares, that from the time the reform of the army takes place, they be entitled to half pay for seven years, in specie, or current money equivalent, and also grants of land at the close of the war, agreeably to the resolution of September 16, 1776; and the act of September 18, 1776, provides for the grants of land, "in addition" to money bounty of twenty dollars.

But the court say that "if Joshua Chamberlain was a captain in the 'Revolutionary war, as alleged in the petition, the same evidence which would be sufficient to substantiate the claim for half pay for 'life, would establish also the right to the bounty land.'"

The evidence and record of the one would be the evidence and record of the other. There could have been no other presentation of the claim of an officer to half pay during life, which could have been of any binding force, other than the return and record that the officer claiming had served to the end of the war, and was in service on the 21st of October, 1780. The extent of the claim depended entirely upon the *duration of life*. If he was bound to file his claim for one year's annuity, he would have been equally bound to have filed it every year. These claims for half pay for life were a vested right, and, by their *very nature*, could not come within any of the statutes of limitation. If they existed, they existed by virtue of a commission, duly recorded;

and if they were brought within the act of October 21, 1780, and were entitled to half pay, their claim was already recorded. In the absence of that presentation and record of service, they could not claim their land and half pay; and the Court of Claims, it would seem, has so decided.

But it may well be urged, inasmuch as the United States, by their judiciary act, expressly excludes all individuals from instituting any suit against the Government, thereby deprived itself of the right thereafter of passing any acts of limitation for the presentation of claims due from the Government to any of its creditors. That the acts of February 2, 1785, and July 23, 1787, were only designed to enable Congress to adjust the claims which existed between the several States and the General Government, and were virtually repealed by the ninth section of the funding act of August 4, 1790; and the act of February 3, 1793, was only designed to induce the perfection of the evidence of claims which were contracted previous to that time, and not to affect the record evidence of the Government in behalf of any claims of its citizens, no more than it could annul or impair the record of the Government against the debtors of the United States. The Government could not, by any principles of law, repudiate all claims against it for many years, and then set up its own acts of limitations against their payment. The Government of the United States having established a Court "to hear and determine all claims founded upon any law of Congress, or upon any contract, *express or implied*, with the Government of the United States," and virtually by this act itself admits the parties, for the first time by a public law, to their rights as creditors, and have thereby waived all acts of limitation to all claims where they are debtors, the Court is not authorized to consider any vested rights as barred by any act of limitation.

It will be remembered that the statutes of limitations were urged in discussing the report of the committee of the Senate of the United States, for the act of May 15, 1828, when these claims were fully considered, and advocated on strict common-law principles as well as equity; and the acts of limitation were by implication repealed, so far as regarded these claims, as will be seen by this short extract from the closing remarks of the chairman of that committee, Judge Woodbury, and also of Mr. Tucker, by which it will be seen the amount excluded by the funding act, and the loss to the officer, and the objections to commutation, as assigned by a Mr. Jackson, an attorney before the Court of Claims.

Extract from the closing remarks of Judge Woodbury, Annals of Congress, Vol. 4, part 1, for 1827-'8, page 441-'2.

"Mr. Woodbury said: But very far was it from the intention of himself, or his able friend from Georgia, (Mr. Berrien,) in advocating the claim on strict common-law principles, to admit that it could not be supported also on principles the most liberal and equitable; while it was equally far, as he believed, from the views of the other members of the committee, (Mr. Van Buren and Mr. Harrison,) who had

‘so eloquently pressed the mere equity of the claim, to admit that it was not also well based on strict common-law principles.” * * *

“But they have averred, and it is again repeated, that these officers are seeking a right, and that is a right both on common-law and on chancery principles. But if on only one, whether it be a right on strict common-law principles, or on chancery principles, it is equally a right, and the claim is equally a legal claim. The forum in which it becomes a right does not alter its legality. Hence, if every gentleman would agree with him from Virginia, (Mr. Tyler,) that the statute of limitation should be scorned, and that the pretended payments made to these officers was ‘mere wind, mere trash,’ I aver, that in any forum, before any court or jury in Christendom, this right, as between individuals, could now be unanswerably established. Let the issue be formed and the cause tried to-morrow, and no three or five judges, no twelve ‘good men and true,’ as jurors, could say that the wages of toil and blood, the solemn promises for sacrifices and sufferings, to secure the liberties of America, had ever been discharged by only ‘wind and trash.’”

* * * “Without dwelling a moment on considerations before urged in the argument, in favor of the legality of this claim, let me ask, what has been the reply to the position of the committee, that, on strict legal principles the promise of half pay for life has ever been fulfilled? Has any one shown that the half pay, in the form of half pay, has ever been paid? No pretence for it. Has any one shown that the half pay has ever been technically released? No pretence for it.” * * *

“How, then, has the promise of October, 1780, been fulfilled? In no way, except by the act of commutation. But it could not be fulfilled by that act, unless all things were transacted in conformity to the provisions of that act. Yet none can deny that, in conformity to these provisions, the commutation must have been accepted by majorities in each of the lines. Such is the express, unequivocal language of the act. Whereas, all must admit, it now appears never to have been accepted by even majorities in over nine lines of the army. Again, to conform to the act, the acceptance must have been in six months, when no acceptance by a single line appears to have taken place till some time after six months. Everybody feels and knows, likewise, that the payment, to be in conformity to the act, was to have been money, or at least securities equivalent to money, when, in truth, it was neither; and even under the most favorable view, if the certificates were kept till the funding, fell short of what was due, from one-fourth to one-third. So the certificates, or the payment, should have been made in September, 1783, but were not, in fact, made until some time in 1784-’5, when worth much less. But, break through the forms of measures, and every lawyer, every constitutional statesman, must admit that, on strict legal principles, there should not only have been a conformity to the commutation act, but, in the act itself, to make it binding, there should have been a regard to private vested rights.”

I propose to submit one other extract from the same book, which shows how the second agreement of the Government was executed.

‘ The records in the Register’s office will show that Mr. Tucker is right
 ‘ in his figures, and as to the principle of settling or redeeming these
 ‘ certificates under the funding act :

“ Mr. Tucker, of N. J. It is ascertained, Mr. Chairman, that each
 ‘ captain, for his five years full pay, received a certificate for \$2,400,
 ‘ bearing interest at six per cent., payable annually, and such a cer-
 ‘ tificate Captain Dehart received in lieu of his half pay for life, which
 ‘ ran eight years without payment of interest, as before stated, viz : from
 ‘ the 1st of January, 1783, to the 1st of January, 1791, the interest
 ‘ amounting on the latter day to \$1,152; making in the aggregate
 ‘ \$3,552. It will be recollected that in March, 1788, the present
 ‘ Government went into operation, and in the year 1790 made provision
 ‘ for and funded the public debt.

“ Well, sir, how did they provide for the payment of Captain De-
 ‘ hart’s \$2,400 principal, and \$1,152 interest, due on the 1st of Jan-
 ‘ uary, 1791? Why, sir, they gave him three certificates. One for
 ‘ \$1,600, being two-thirds his principal, with interest at six per cent.,
 ‘ and one for \$800, the other third of his debt, but deferred ten years
 ‘ without interest, and, instead of paying his \$1,152 down, or giving
 ‘ him paper at six per cent., they gave him a certificate for his \$1,152
 ‘ interest, redeemable at the pleasure of the United States, at three
 ‘ per cent. Let us now examine how this funding system operated.

- “ 1. Loss of interest on \$800, deferred from 1st January,
 1791, to 1st January, 1801, (ten years,) at six per cent. - \$480.00
- “ 2. Interest on the above sum from the 1st January, 1801,
 to the 1st January, 1828, (twenty-seven years,) at six per
 cent. - - - - - 777.60
- “ 3. Loss of interest on the \$1,152 of the three per cent.,
 from 1st January, 1791, to 1st January, 1828, (thirty-seven
 years,) at three per cent. - - - - - 1,278.72

“ Total loss on Captain Dehart’s, down to this time - - 2,536.32

“ And, in the same proportion, every officer’s pay or commutation,
 ‘ according to his rank. (Ib., p. 2,599.)

“ The commutation, then, is clearly liable to the following objections :

“ 1. That the commutation was not a valid accord and satisfaction
 ‘ for half pay for life.

“ 2. That it was so construed as to take away the rights of these
 ‘ officers, under the resolve of October, 1780.

“ 3. Of not being an equivalent for the half pay.

“ 4. Of having been effected under circumstances, and by the opera-
 ‘ tion of motives, which deprive it of all obligatory force.

“ 5. That according to strict legal construction, these officers did not
 ‘ commute their promised half pay for life by accepting the so-called
 ‘ commutation certificates ; they in no respect having been in conformity
 ‘ to the act.

“ 6. Of partial and defective execution.”

SOME OF THE OBJECTIONS URGED IN CONGRESS AGAINST THE BILL NOW BEFORE THE SENATE, AS REPORTED BY SENATOR EVANS.

Because this report (which was made February 4, 1854) admitted "the legal obligation, in most of the cases, had been discharged by the payment of commutation." And although the report professes to admit the claimants to their *original rights*, yet the report adds, that the allowance of those claims is more in nature of a "*benevolence*, given in discharge of a great moral obligation;" and therefore it is contended that Congress could not constitutionally appropriate money for benevolent purposes. Yet, in another portion of this report, it is said: "The committee are of the opinion they should be admitted to their *original rights*, and have accordingly provided in the bill that they shall be paid the half pay for life, deducting the amount of their commutation certificates. No interest to be allowed."

This report of Senator Evans was made 4th February, 1854. Since that time, however, while the present bill was under discussion, and calling forth some of the ablest minds in opposition, one of the same class of claims was undergoing a legal investigation in the Court of Claims. That court decided that these claims were founded upon a solemn contract—that their half pay was a vested right—and could not be rescinded or impaired by any subsequent legislation; and that the commutation, although paid in specie, without interest, was the *compromise* for the half pay, and allowed the claimant the full amount of half pay, together with the interest on each year. The report of the court was made to the 34th Congress, while this bill was pending in the Senate, and this report passed both Houses by a large majority, which would seem to have settled the question of the claims being founded upon a *legal consideration*.

The question now before the Senate would seem to be, not whether Congress made on the 21st October, 1780, a judicious contract or not, but whether, having adopted the report of the court, and thereby admitted these parties to their original contract, by a positive law, in pursuance of the Constitution—whether Congress, with honor to itself, can repudiate the deliberate action of the 34th Congress.

The objection which excited much *opposition* to the present bill, viz: That those officers who lived long "enough, and received their commutation, and also those who received full pay for many years under the act of May 15, 1828, would still receive the same amount, and much more than those who died early." This at first view would seem to have some weight, but upon further consideration will be found to be quite the *reverse*, when taken in connection with the principles of this decision.

The extent of the claim depended entirely upon the duration of life. Therefore, if all the officers are legally and equitably entitled to *principal and interest*, and by the principles of law, well established, all *payments* made on a contract payable with interest are *first* to be applied toward the *interest*, those officers who lived the longest, and to whom therefore the largest amount was due, on the *suspension of interest*, must lose more than those who died early; and the person whose claim, in consequence of his early death, was the least, would lose the least;

which objection makes more apparent the injustice committed to the officers by the act of 1783.

Some objected to the bill, because it embraced only those officers named in the resolves, and did not extend to the soldiers of the army, although they were not embraced in the resolves, who held certificates to the amount of eighty dollars each. Yet it will be seen that each of the surviving soldiers received, under the act of May 15, 1828, over two hundred dollars in specie, and full pay during the remainder of life, although they were not entitled to half pay by the resolve of 1780.

Others objected to the *original contract*, because some of the officers who served a *shorter* time would receive the same amount as those who served the *longest term* under the resolve of October 21, 1780. The act of 1780 only embraced those who were then in service, and continued during the war, and allowed those officers to be supernumeraries who retired, to whom had been promised seven years half pay in specie or current money, or an equivalent, payable on the first day of January, 1781. There were but few who retired. In looking over twelve regiments of Virginia, I observe but five whose commissions were subsequent to 1778—averaging from 1775 to 1778.

The old Confederacy repudiated, during all the period of its existence, the payment of even the *interest* of those certificates, which it should be remembered was payable at the end of *each year*, which was in express violation of the terms of the certificates, and also the *conditions* of the resolve itself of 1783. The ninth section of the funding act provides, "That nothing in this act contained shall be construed in any wise to 'alter, abridge, or impair, the rights of those creditors of the United States who shall not subscribe to the said loan, or the contracts upon 'which their respective claims are founded, but the contracts and rights 'shall remain in full force and virtue.'"

The funding act made no distinction between the certificates which were virtually discharged or scaled by the acts of the 18th March, 18th April, and 28th June, 1780; and those certificates which were sent to the officers, any person who had taken them at the price fixed by law, or at a still lower rate—at one hundred for one—received the same as those which represented the pledged faith of the nation for an estate of half pay for life; which is an admission by the Government of the entire absence of all security, and therefore the repudiation of the resolve of 1783. The claims of the officers to half pay were by the express words of the ninth section of the act of August 4, 1790, not in any way altered, abridged, or impaired; but the contract was thereby *designedly* left in full force, or, as the act declares, "shall remain in full force and virtue." The officers did not subscribe to the loan, nor did they ever authorize any person to subscribe for them; but if any of them had subscribed to the loan, the *original contract* upon which they were founded was not thereby altered, abridged, or impaired, because the funding act expressly provided that the United States were not bound to pay even that proportion of the claim, but simply reserved the right of doing so. It could not have been expected that the officers should have waited forty years to test *this provision* of the funding act. The Government therefore could not have suspended only the *value* of the certificates at

the time they were issued, which would have been to a captain sixty dollars, and no more. If the Government redeemed at a greater per cent., it was to accommodate speculators, and in *violation* of the rights of the officers and duty of Congress.

In confirmation of this construction of the contract of October 21, 1780, it will be remembered that the seven years half pay promised under the resolve of October 3, 1780, was evidently made with reference to the depreciated state of all public paper, and was expressly made payable in *specie*, or an equivalent, and the contract of October, 21, 1780, being only an *extension*, and also embracing this promise of seven years half pay, is conclusive evidence that the half pay for life was to have been held sacred, and could not by any rules of justice come within the principles of the funding law, and subject to the same rules which applied to all the depreciated paper held by purchasers, at the rate of one dollar to the hundred.

It cannot be urged by the Government, that if the certificates were of little value, so must have been the half-pay contract. One which was classed with the floating, valueless paper, constituting the currency of the country, should not be classed with *specie*, secured by the honor and all the property of the Government.

The half pay was virtually secured by the pledge of the public faith for its payment, presenting at the time the contract was made a wide distinction between the valueless paper of the Government which the officers then held, which was known to be worth at that time, by the law of the land, only the rate of forty dollars for one.

It is said, the officers did not remonstrate to Congress against the injustice and inequality of the act of 1783. It is said, in answer, that the petition of the few officers asked to have paid in advance to them (not a new promise) an equivalent to their half pay for life. What would have been an equivalent to the officer of eighty years, could not have been an equivalent for the half pay for life of the officer of thirty-seven years of age.

But the officers say, that the resolve of 1783 ought to have no effect, because it was well known to Congress that the Government had no power to comply with its terms, even if the officers had assented to it.

It ought not to be forgotten, in connection with the contract for half pay for life, that the Government was driven from one *expedient* to another, which the imperative necessities of the moment required :

1. Promising grants of land—September 16, 1776.
2. Seven years half pay to those who should serve to the end of the war—May 18, 1778.
3. Seven years half pay, in *specie* or *current money*, to the supernumerary officers, to commence January 1, 1781 ; as also grants of land—October 3, 1780.
4. Not being able to meet the half pay of a single year, in *specie* or *current money*, they increase the seven years half pay to half pay during life—October 21, 1780.
5. As peace had been conquered, and the Government were unable to pay the officers their *arrears* for monthly pay, or to make any provision for their half pay during life, they then resorted to another *expe-*

dient, of promising the officers five years full pay, in *specie* or *securities*, with interest, payable *annually*—March 22, 1783.

6. Not being able to *pay* or *secure* this small amount of their claim, resorted to another *desperate expedient*, and caused the Paymaster General to issue and *send* to the officers more of these repudiated certificates, as *specie* and *securities*.

7. Not being able to pay the interest of a single year, repudiate them.

Finally, resorted to a funding act, by which the new Government propose an arrangement by which there is to be no distinction between the officer who has been charged twenty-four hundred dollars in commutation, and the person to whom he has sold them at the value fixed by law—for sixty dollars. And the new Government does not agree to pay the proportion named, but only obtained the right to do so, if the Government thought proper; requiring about forty years to test the ability and inclination of the Government, from the time they were funded.

Having waited seventeen years after the peace for warrants of their lands, many of them were compelled to take them while claimed by hostile savages, and defend their possession by arms.

But, as it has already been remarked, all these considerations have been fully considered by Congress, and the principles *adopted* will apply all the *payments* made under the act of 1828 to the payment of the interest; and if any balance of interest remains, Congress may think proper the present time to *suspend* the same, without *imposing* any forced condition that it shall be in full of all claims.

But, strange as it may appear, while the present bill deducts these valueless certificates, not at the value they were forced upon them, (at two dollars and fifty cents to the hundred,) but at their face, the bill contemplates the payment of nothing, except the half pay which accrued beyond the amount of those certificates; and yet, during the same Congress in which the report of the Court of Claims was adopted, giving principal and interest to one of the claimants, the bill which had once passed the Senate, and afterwards the House, was postponed, although allowing so small a portion of the claim, and containing a provision that it should be in full of all claims.

The present bill will give the claimants included the following sums, assuming the whole number entitled to half pay to be 2,220. The calculations of human life and statistics of the country give the following results:

EXCLUDED BY THE PRESENT BILL.

Of the whole number died before 1794	-	-	-	-	-	375
Of whom were never <i>married</i>	-	-	-	-	-	300
Of those who were married, and died <i>without issue</i>	-	-	-	-	-	300
Of those who were married, leaving issue, where children and grandchildren are also dead	-	-	-	-	-	275
Total	-	-	-	-	-	1,250

This number deducted from 2,220, leaves 1,070 who would be enti-

tled, *not excluding* those who have received their half pay by *private acts*. Allowing the pay of captain to be the average, it would amount to \$245,200 per annum, and allowing the aggregate of life over the ten years to have been seven years.

There is now due this class of claimants, which are embraced in this bill, one million six hundred and seventy-six thousand four hundred dollars, not including interest, which the present bill excludes, and this would operate as a very gradual call upon the Treasury for that amount—first six months, \$500,000; second six months, \$500,000; third six months, \$200,000—and so on.

Strange to relate, the present bill before the Senate, embracing so small a *pittance* of these just claims, *excluding* and *suspending* all the balance of the claims, was reported in February, 1854, and passed the Senate. A similar bill passed the House the last Congress, but was postponed in the Senate to the next Congress.

It seems a strange way to avoid the payment of just claims, to delay from year to year until the claimants become disheartened and die, and then restrict the proposition to pay a pittance of the claims to the few who may have survived.

There was a time when that just maxim of law prevailed, “That no party should take any advantage of his own wrong;” which was considered as much binding upon Governments as upon the people.

It would seem those claims commended themselves to Congress and to General Washington, by the highest considerations which a sense of justice and gratitude could inspire, as appears by an—

EXTRACT FROM A CIRCULAR LETTER FROM HIS EXCELLENCY GEORGE WASHINGTON, COMMANDER-IN-CHIEF OF THE ARMIES OF THE UNITED STATES OF AMERICA, TO THE GOVERNORS OF THE SEVERAL STATES.

“HEADQUARTERS, NEWBURGH, *June 18, 1783.*

“The ability of the country to discharge the debts which have been incurred in its defence is not to be doubted. An inclination, I flatter myself, will not be wanting. The path of our duty is plain before us; honesty will be found, on every experiment, to be the best and only true policy. Let us, then, as a nation, be just; let us fulfil the public contracts which Congress had undoubtedly a right to make, for the purpose of carrying on the war, with the same good faith we suppose ourselves bound to perform private engagements.

“In this state of absolute freedom and perfect security, who will grudge to yield a very little of his property to support the common interests of society, and to insure the protection of Government? Who does not remember the frequent declarations, at the commencement of the war, that we should be completely satisfied, if, at the expense of one half, we could defend the remainder of our possessions?

“Where is the man to be found who wishes to remain indebted for the defence of his own person and property, to the exertions, the bravery, and the blood of others, without making the generous effort to pay the debt of honor and gratitude? In what part of the continent shall we find a man, or body of men, who would not blush to stand up and propose measures, purposely calculated to rob the sol-

‘dier of his stipend, and the public creditor of his due? And were it possible that such a flagrant instance of injustice could ever happen, would it not excite the general indignation, and tend to bring down upon the authors of such measures the aggravated vengeance of Heaven?

“For my own part, conscious of having acted, while a servant of the public, in the manner I conceived best suited to promote the interests of my country; having, in consequence of my fixed belief, in some measure pledged myself to the army that their country would finally do them complete and ample justice, and not willing to conceal any instance of my official conduct from the eyes of the world, I have thought proper to transmit to your Excellency the enclosed collection of papers, relative to the half pay and commutation granted by Congress to the officers of the army.

“From those communications my decided sentiment will be clearly comprehended, together with the conclusive reasons which induced me at an early period to recommend the adoption of this measure in the most earnest and serious manner.

“As the proceedings of Congress, the army, and myself, are open to all, and contain, in my opinion, sufficient information to remove the prejudice and errors which have been entertained by any, I think it unnecessary to say anything more than just to observe, that the resolutions of Congress now alluded to are undoubtedly as absolutely binding upon the United States as the most solemn acts of confederation or legislation.

“As to the idea which I am informed has in some instances prevailed, that the half pay and commutation are to be regarded merely in the odious light of a pension, it ought to be exploded forever.

“That provision should be viewed as it really was, a reasonable compensation offered by Congress, at a time when they had nothing else to give to officers of the army for services then to be performed.

“It was the only means to prevent a total dereliction of the service; it was a part of their hire.

“I may be allowed to say, it was the price of their blood and of your independency.

“It is therefore more than a common debt; it is a debt of honor; it can never be considered as a pension or gratuity, nor cancelled until it is fairly discharged.”

The action of Congress in relation to the claims of the officers may not be found uninteresting.

As early as 1810, while the country was suffering great depression from the effects of the debt of the Revolution, an embargo of many years, and a war threatened with England, then, even then, they were admitted to be justly due. Forty-seven years ago, the officers then, in view of the impoverished state of the treasury at that time, proposed to deduct the whole amount of those repudiated commutation certificates, and receive their half pay from the time of the peace to the time of their death, (being the same terms which are contemplated in the bill of Senator Evans.) The committee to whom was referred their petition for half pay reported that the contract of 1780 had not been

substantially complied with, and recommended the following resolution:

“*Resolved*, That the prayer of the petitioner is reasonable, and ought to be granted.”

The gloomy anticipations of a long, expensive war with England, postponed any further action until after the close of that war.

The claims of the officers for half pay were again presented soon after the war, even while the impoverished state of the treasury still continued; and that, too, after the passage of the indigent pension act of March 18, 1818, which act was not confined to those officers and soldiers who served to the end of the war. All who had served nine months were entitled to its benefits. Yet, after the passage of this act of March 18, 1818, on the 7th of December, 1818, the committee of the House reported, and proposed to deduct one-eighth from the commutation certificates, and pay all the officers the balance.

President Monroe, in his message of 1819, again called the attention of Congress to the claims of these officers, and Mr. Sargent, of the House, made a very able report, and proved, beyond all question, the justice and legality of these claims, and recommended to allow all the officers entitled to half pay from the time of peace, in 1783, to their death, deducting the amount of the certificates, agreeably to the terms of the petition.

This claim for half pay was again admitted in the report of Mr. Hemphill, of the committee of the House, of January 3, 1826, in which he says “that, by virtue of those resolves, a solemn contract between the Government and the officers was made, that ought to be observed on the part of the Government with the most profound sanctity. That when the power of rescision resides exclusively in the bosom of one of the parties, it should be exceedingly cautious that justice should be done to the other; that the claims are founded on a contract which has not been fairly rescinded, and if it has, there cannot possibly be a doubt that the commutation contract has not been fulfilled;” and recommended allowing the officers their half pay, deducting their commutation certificates, without any reference to what may have been recovered under the pauper acts of 1818 and 1823.

Mr. Burges made a very able report to the House, February 11, 1828, in which the committee say “that, in their opinion, the delivery of those certificates, as well on general principles as on those which govern courts of law or equity, did not annul the right of half pay or exonerate the Government from the obligations of the original contract. Such of those officers as had survived the war, and continued in the service until the peace, became severally and individually vested with a complete right to the reward of half pay for the residue of their lives.

“The reward was gallantly won at the point of the sword; it was the price of our independence, purchased with blood and sanctioned by public faith.”

The committee say: “In regard to commissioned officers, Congress, by a resolve of the 22d of March, 1783, offered to those then in the service, as a substitute for this stipulated half pay, the amount of five

' years full pay in *money* or *securities*, bearing an interest of six per
 ' cent. per annum, at the option of Congress. These securities were
 ' to be such as should be given to the *other creditors* of the United
 ' States. In the same resolve, there were offered to the officers entitled,
 ' who had retired from the service on the reform of the army as such,
 ' substitute certificates to the like amount. To these offers were an-
 ' nexed two express conditions, viz: First, that they should be accepted
 ' or refused by *lines* and *corps*, and not *individually*; and, second, that
 ' such acceptance or refusal should be signified to Congress by the
 ' Commander-in-chief, as to the army under his immediate command,
 ' within two months; and by the commanding officer of the Southern
 ' army, as to those under his command, within six months from the date
 ' of the above resolve of the 22d of March, 1783. At the time these
 ' offers were made, it is evident, from all the calculations on the prob-
 ' abilities of human life, that seven years full pay, in advance, would
 ' have been somewhat less than an equivalent to the half pay for life
 ' to the younger class of officers, who naturally are the present memo-
 ' rialists. And your committee are compelled to say, that they have
 ' discovered no reason why the Government should have denied an indi-
 ' vidual right of refusing a disadvantageous offer, when the right was
 ' individual, and considering the Government under the obligation of an
 ' *express, solemn contract*. Your committee do not perceive why it
 ' might not as well have annulled the original right, as to have enforced
 ' the memorialists to abide by the vote of others, who were interested,
 ' to put the value of the lives of all upon one equal footing. If, how-
 ' ever, it should be considered by the House that an assent given in the
 ' manner prescribed by the resolve is binding upon each individual,
 ' then your committee beg leave further to observe, that such assent,
 ' which is to work so much injury and injustice, ought to appear to have
 ' been given and signified strictly according to the conditions of the
 ' offer. In examining this part of the subject, your committee do not
 ' find any signification to Congress of any acceptance, other than a
 ' notice in the Journals of a report made by the Secretary of War, on
 ' the 31st of October, 1783, and long after the officers had dispersed,
 ' that certain lines from New Hampshire to Virginia, inclusive, had
 ' agreed to accept. This report itself is not to be found, but certain
 ' it is, that no signification was made to Congress, either by the Com-
 ' mander-in-chief or the commanding officer of the Southern army, or
 ' within the times prescribed in the offer; neither was there ever any resolve
 ' of Congress specifying such assent, or declaring their option whether
 ' to pay in money the amount offered, or to give securities for the same,
 ' on interest. If the offer had been complied with, according to its
 ' sense, your committee are of opinion that the loss of two years full
 ' pay would have been submitted to, as a new sacrifice, with that pa-
 ' tience and disinterestedness which were the distinguishing characteris-
 ' tics of an American officer. But, on a careful examination of this
 ' matter, your committee have been forced to the conclusion, that the
 ' offer was not so complied with; which conclusion results from the
 ' following considerations, which are most respectfully submitted to the
 ' House: From the manner of calculating life-annuities, which is by

estimating on the one hand the purchase-money with compound interest, and on the other the probable duration of the life; from the pressing pecuniary necessities of the officers, and their want of capital to set up, with advantage, in some of the profitable pursuits of civil life; and from the absence of any specification in the resolve as to time—it is manifest that it was as well the common understanding of the parties, as the legal conclusion, that the offer was to be complied with in advance, or in anticipation of the growing annuities. After the peace, and after the officers had dispersed, a certificate was sent to each individual, indiscriminately, whether he had retired on the reform of the army or had continued in the service, that an amount equal to five years full pay was due to him, and that such amount, with interest, was payable to him or bearer. The certificates had no funds whereon to rest, and their market value was not equal to one year's pay. And it appears to your committee too much to say, that the delivery of this almost valueless paper was a payment in money, according to the sense of the offer, or that these certificates were the securities *intended thereby*, either according to the common understanding of the term, or the distinction expressly made in the resolve itself, between *securities* and *certificates*. And these certificates of the Paymaster General, or of the commissioners for settling army accounts, were not *securities* to any creditor of the United States, until registered or funded, more than the other floating certificates of the Quartermaster General or the Commissary General, which were issued and made payable with interest under the express resolves of Congress during the period of the war. Under these considerations, your committee, in the choice of the alternative, are obliged to say that in their opinion the delivery of these certificates, as well on general principles as on those which govern in courts of law or equity, did not annul the right to half pay, or exonerate the Government from the obligations of the original contract in this regard."

It may be well to remember, in connection with these claims, that long after the passage of the acts of May 15, 1828, and June 7, 1832, and after the act of July 6, 1836, in behalf of the widows, the Senate Committee on Revolutionary Claims, May 11, 1838, reported that,

"After an assiduous investigation, the committee conclude that no legislation subsequent to the 21st October, 1780, could, or that by a fair construction did, contravene or in any manner impair the claim of the officers of the army, or any class of such officers, to the half pay promised them by the act of October 21, 1780. The half pay for life contracted by the act of October, 1780, to be paid to the officers of the army for certain services to be performed by them, *instantæ* became a *vested right*, of which subsequent legislation nor nothing whatever could divest the officer, save a failure on his part to perform the prescribed service. And it would be a libel on the good sense and justice of the distinguished statesmen and patriots of that period, to imagine, even, that any legislation subsequent to the 21st of October, 1780, had for its object to impair the deliberate engagement made by that act to allow half pay for life to the officers of the army."

It ought not to be forgotten that all of the *committees of Congress* to whom these claims have been referred have all united in the conclusion, that those *commutation certificates* sent to the officers were not at *that time* of the value of *one-eighth* their nominal amount, and that each and all of them have recommended their payment.

Senator Evans, of South Carolina, on the 6th February, 1854, reported a bill in behalf of those claims, which passed the Senate, but was not reached in the House the 33d Congress. The House, of the 34th Congress, passed a similar bill, which placed the claims upon legal grounds. This bill was postponed in the Senate.

The bill was advocated by Senators Evans of South Carolina, Bell of New Hampshire, Foster of Connecticut, Seward of New York, Crittenden of Kentucky, and many others.

SEVEN YEARS HALF PAY,

PROMISED UNDER THE RESOLVE OF AUGUST 24, 1780.

The next contract for our consideration, which is also embraced in the present bill, is that of seven years half pay, promised under the resolve of August 24, 1780.

In order that they may be fully comprehended, I subjoin the several acts of Congress upon which they are based.

The first act is that of August 26, 1776.

The second act is the following resolution of September 16, 1776 :

“*Resolved*, That in addition to money bounty of twenty dollars to each non-commissioned and private soldier, Congress make provision for granting land, in the following proportions, to the officers and soldiers who shall engage in the service, and continue therein to the close of the war, or until discharged by Congress, and to the representatives of such officers and soldiers as shall be slain by the enemy, viz : to a colonel, 500 acres ; lieutenant colonel, 450 ; major, 400 ; captain, 300 ; lieutenant, 200 ; ensign, 150 ; each non-commissioned officer and soldier, 150 acres.”

This was extended, by resolve of September 18, 1776, “to all who are or shall be enlisted for that term.” This was “extended to the general officers,” in the following proportions : major general, 1,100 acres ; brigadier general, 850 acres—August 12, 1780. September 22, 1780, it was extended “to the several officers of the medical department, except the clerks and stewards.”

It will be seen that the act of August 26, 1776, was very full in all its provisions for pensions for wounds received anterior to that date, which was further extended by the act of September 25, 1778.

RESOLUTION—IN CONGRESS, AUGUST 26, 1776.

“1. Military officers, non-commissioned officers, and private soldiers, who shall lose a limb, or be otherwise totally disabled, in the line of their duty, to receive a pension per month equal to half their monthly pay as officers or soldiers of the United States.

“2. Commanders of ships, officers, marines, or seamen, belonging to the United States, who shall lose a limb, or be otherwise totally disabled, in engagements in which no prize is taken, to receive a monthly pension equal to one-half their monthly pay as officers, seamen, or marines ; but in case a prize be taken, their respective profits thereof shall be computed as part of their pension, and deducted accordingly.

“3. Officers, seamen, and soldiers, in the army or navy of the United States, who shall be wounded in an engagement, and rendered incapa-

‘ ble of serving in the army or navy, but not totally disabled, to receive
 ‘ an adequate monthly pension, not to exceed their half pay.

“ 4. Provided, respectively, that in every such case of wound or
 ‘ disability, such officer, soldier, seaman, or marine, shall produce the
 ‘ evidence required to substantiate the facts of his wound or other dis-
 ‘ ability in such engagement.

“ 5. The Legislatures of the several States recommended to appoint
 ‘ proper persons to receive and examine such evidence, and to register
 ‘ the same; also, what support is adjudged by the Legislature of their
 ‘ State; and the payments made from time to time to be reported to
 ‘ Congress, or to the ‘ Board of War.’

“ 6. And that the Legislatures cause such payments to be made on
 ‘ account of the United States.

“ 7. Provided that all such officers and soldiers, capable of guard or
 ‘ garrison duty, be formed into a corps of invalids; and also said naval
 ‘ officers, marines, and seamen, capable of doing any duty in the navy,
 ‘ be so employed.”

“ Relief is extended to officers and non-commissioned officers of the
 ‘ army and navy, and to soldiers, seamen, and marines, who had, ante-
 ‘ rior to the resolve of the 26th of August, 1777, lost a limb, or been
 ‘ otherwise disabled, such as that granted by said resolution.”

RESOLUTION—IN CONGRESS, SEPTEMBER 25, 1778.

“ The Board of War brought in a report, which was taken into
 ‘ consideration. Whereupon, Congress came to the following reso-
 ‘ lution:

“ 1. Whereas Congress, by a resolve passed on the 26th of August,
 ‘ 1776, made provision for commissioned and non-commissioned officers,
 ‘ officers of the army and navy, as also for the private soldiers, marines,
 ‘ and seamen, who should thereafter lose a limb in any engagement, or
 ‘ be otherwise so disabled in the service of the United States of Amer-
 ‘ ica as to render them incapable afterwards of getting a livelihood;
 ‘ and whereas divers officers and others have lost limbs, or been other-
 ‘ wise disabled as aforesaid, before the said 26th of August, to whom
 ‘ the like relief ought, equitably, equally to be extended—

“ *Resolved*, That all provisions and regulations contained in the said
 ‘ resolve of August 26, 1776, shall extend to all persons who lost a
 ‘ limb, or are otherwise disabled as aforesaid, in the service of the
 ‘ United Colonies or States of America, before the said 26th of August
 ‘ and since the commencement of hostilities, on the 19th of April, 1775.

“ 2. And whereas doubts may arise, in some cases, whether certain
 ‘ persons, maimed or disabled, and claiming pensions, were at the time
 ‘ in the service of the said Colonies or States: for removing the same.”

“ *Resolved*, That every commissioned and non-commissioned officer,
 ‘ and private man, who, since the commencement of hostilities, as afore-
 ‘ said, has been, or hereafter shall be, drawn forth for the common de-
 ‘ fence, (and not for the service of any particular State,) or who has
 ‘ turned out, or shall hereafter turn out, voluntarily, to oppose the
 ‘ enemies of the said United Colonies or States, upon any sudden attack
 ‘ or invasion, or upon any enterprise carried on under their authority,

‘ and in such service has lost or shall lose a limb, or has been or shall be otherwise disabled, as aforesaid, shall be entitled to the pension allowed in said resolve of August 26th, 1776; provided that any such commissioned or non-commissioned officer, or private man, being found capable of doing guard or garrison duty, shall be subject thereto, and serve in the corps of invalids when required, or, on refusing so to do, shall be struck off the list of pensioners; unless the person so refusing have a family, or be otherwise peculiarly circumstanced, and the Governor or President and Council of the State he belongs to, or in which he resides, are of opinion an exception should be made in his favor, and an exemption granted him from such service, a certificate of which opinion he shall produce, previous to his receiving his pension.

“ And whereas it may happen that many persons, maimed or disabled, as aforesaid, by reason of their falling into the hands of the enemy, the deaths of their officers and surgeons, or other accidents, may not have it in their power to procure the certificates required by the afore-mentioned resolve, to entitle them to their pensions :

“ *Resolved*, That in such cases application be made to the Governor or President and Council of the State to which any person maimed or disabled, as aforesaid, belongs, or in which he resides, and upon showing to him or them satisfactory proof that he was maimed or disabled in the manner before mentioned, and producing his or their certificate thereof, he shall be entitled to and receive a pension, in like manner as if he produced the certificate required by the said resolve.”

Then follows the resolve of August 24, 1780, referred to in the bill now before the Senate.

RESOLUTION—IN CONGRESS, AUGUST 24, 1780.

Half pay for seven years granted to officers, &c., extended to widows and orphans of those officers, &c.

“ *Resolved*, That the resolution of the 15th day of May, 1778, granting half pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of those officers who have died or shall hereafter die in the service, to commence from the time of such officer’s death, and continue for the term of seven years; or if there be no widow, or in case of her death or intermarriage, the said half pay be given to the orphan children of the officer, dying as aforesaid, if he shall have left any; and that it be recommended to the Legislatures of the respective States to which such officers belong, to make provision for paying the same, on account of the United States.”

The next resolve is that of October 3, 1780, when the army was reorganized, to take effect the 1st of January, 1781 :

“ *Resolved*, That from the time the reform of the army takes place, they be entitled to half pay for seven years, in specie or other current money equivalent, and also grants of land at the close of the war, agreeably to the resolution of September, 1776.”

The first act of Congress to induce service in the army was that of August 26, 1776. It provided a reward not exceeding half pay to all

who should be wounded in the service, in proportion to the injury and disability, during life, or the end of said disability. The next is the act of September 16, 1776, which made each of the officers and soldiers who were then in service, and continued therein during the war, and the representatives of those who were slain by the enemy, in addition to bounty money, to grants of land, in the proportions therein named.

The next act as a further inducement to serve is that of May 15, 1778. This act was additional and supplementary to the act of September 16, 1776, granting seven years half pay to those officers who were commissioned by Congress, who then were or thereafter should be in the service of the United States, and continue therein during the war.

The next act of Congress was that of September 25, 1778, which is additional to and explanatory of the act of August 26, 1776; and as it is *subsequent* to the act of May 15, 1778, may also be considered explanatory of that act, and thereby extending the same.

The next act is that of August 24, 1780, which provides that the provisions of the resolve of May 15, 1778, for seven years half pay, promised to those officers who shall serve to the end of the war, should extend to the widows of those officers "who have died or shall hereafter 'die, or in case of their death or *intermarriage*, that the said half pay, 'to be given to the orphan children of the officer, if he shall have left 'any." This act is additional to the bounty-land act of September 16, 1776, and applies the continued service of the act of May 15, 1778, to that of the death service, but did not thereby intend to make the grant less *certain* or less *extensive*, but it only sought to secure it in the officer's family, up to a certain point, by *priority* of right in the application of payment.

The several resolves constitute a solemn contract for land and seven years half pay. It cannot be considered in the light of a *gratuity*, wherein the grant may be *intentionally* restricted, as in cases where the party may have received the consideration *promised* under the contract for the full term of the time named in the contract; in that case, of an *extension* of the seven years in addition, may be viewed as a gratuity. But if the officer was killed, or died within the service, and comes within the provision of the act, the seven years half pay, it would seem, became due *immediately*, together with the land. If the widow and children are dead, it would by law descend to the grandchildren. The grant will not for that reason be lost. The resolve of October 3, 1780, was passed *subsequent* to either of the other acts, which promises seven years half pay to each of the *supernumerary officers*, in *specie* or *current* money; "also, grants of land at the close of the war, agreeably to the resolution of 16th September, 1776." It does not make any *priority of payees*, because it was in all probability to be paid to those officers themselves; but the practice of Congress has been to protect its payment, for the benefit of the children, in all cases of the seven years half pay, where the widow had deceased or intermarried.

It will be observed that Congress adopted measures with reference to invalids by

RESOLUTION—IN CONGRESS, JUNE 7, 1785.

“ *Resolved*, That it be, and it is hereby, recommended to the several States, to make provision for officers, soldiers, or seamen, who have been disabled in the service of the United States, in the following manner :

The recommendation of Congress to the States to provide for invalids of the army and navy, resident in the States, respectively.

“ Section 1. List to be made out. 2. Certificate necessary. 3. Pensions to disabled officers equal to half pay, and rateable allowance to non-commissioned officers and privates. 4. Each State to appoint persons to examine claimants. 5. Each State authorized to pay. 6. Any State may form invalid corps. 7. Quarterly returns of invalid corps. 8. Invalids to take an oath. 9. Magistrates to send affidavits.”

Many of these pensions were paid by the *individual States* ; hence the necessity of limiting the time of presentation of many claims, wherever the order of priority of payees existed. By the act of June 11, 1788, each State shall have credit with the United States for invalid pensions. The act of September 29, 1789, the military pensions granted and paid by the States to be paid by the United States, for the space of one year, under such regulations as the President of the United States may direct, and the act of July 16, 1790, carried the provisions forward another year. Up to this time, “ no provision had been made for the discharging of the arrears of pensions due to officers, non-commissioned officers, and soldiers, who were wounded and disabled whilst in the service of the United States ; ” and the third section of the act provides that a certificate shall issue for the amount, “ and in case of the death of any person so entitled, the certificate shall pass to his heirs or legal representatives, or representatives.” The fourth section, which applies to the widow or orphan of each officer, &c., &c. : “ shall receive a certificate therefor, in like manner and on the same principles as certificates are by this act directed to be given to officers, non-commissioned officers, and soldiers who were wounded or disabled as aforesaid.” Under those and many subsequent acts of Congress, a large number of the seven years half pay claims originally due to the widows and orphans have been paid, and many of them have been paid *with the interest*. Priority of payees was made to secure it against the liabilities of debts, and not to exclude it from the children or grandchildren. If the payment has been delayed by the *Government* for many years after the peace, until the widow and children may have deceased, Congress it would seem would consider the grandchildren equally entitled to the amount of the seven years half pay, and have often paid the same to the grandchildren. If the claim ever vested in the officer, it cannot be lost for want of continuance of priority of payees, it will follow the *land portion* of the consideration, and become payable to the representatives of the officer. But if Congress had the power to insert in the resolve the right of *priority* of payees, as far as the widow and orphan, it would have the same right to extend it to the grandchildren. Contracts are always construed with the most strict-

ness against the grantor; and a *forfeiture* of consideration is never regarded with favor, especially in behalf of the State. A contract of A with B, wherein A agrees to pay B a sum, this is payable to B and his heirs. Here the consideration of the *contract itself* contemplates the price of life and death of the *grantee*; and the *presumption of law* is, that so far he has agreed, and that it is his *nearest choice*; that it should be secured to his widow and children first, and then the law would add his grandchildren, as he would wish to have it. Equity, justice, and the principle of humanity, would seem to dictate that it should be protected to the grandchildren.

But the claimants urge that the claim for seven years half pay does not depend entirely upon the resolve of August 24, 1780; that the land portion of the contract, being a part of the consideration, and that the renewal of the seven years half pay for the continued service was the same, in all its relations to the Government, as the death service; and as the continued service has no priority of payees, and that the act of 3d October, 1780, gave the seven years half pay, "and also the land, agreeably to the resolve of September 16, 1776;" that all the considerations were blended, and wherever the seven years half pay was added, it became subject to the same disposition with that of the land portion of the contract, beyond the termination of priority of the payees named by Congress.

The claimants urge that, in many cases, the mother and orphan children died while waiting for the suspension of limitation acts and readiness on the part of the Government. They further urge that they ought not to be estopped from receiving said seven years half pay, because the time for granting the land portion of the contract has been extended from 1802, by many acts of Congress since 1802, up to June, 1858, which has renewed all portions of the contract up to the present time.

The construction of the acts of May and August, as expressly set forth by the acts of Congress, have established—

1. That they apply to those widows and orphans of those officers who were killed or died previous to May 15, 1775, as well as those who died subsequently.

2. That the act of August 24, 1780, extends as well to the widows and orphans of those officers who were killed after the adoption of the army by Congress, on the 15th of June, 1775, and more especially of those who were killed after the 27th of June, 1775, when Washington took command of the army, as those who were killed after that time.

3. That Congress have, by public and private acts, made the claim of the heirs and payees of the seven years half pay coextensive with that of the land portion of the contract, and have paid the same to the representative of the grandchildren of the officer, (who was killed.)

Many cases may be found to sustain this position. I will only refer to that of John M. Gregory, grandson of Lieutenant John Gregory, of the army of the Revolution, June 3, 1834. (Session acts, page 143.)

4. That the claim for seven years half pay is in addition to, and a part of, the same contract, granting land under the resolve of September 16, 1776—the consideration of each being founded upon the death

of the officer; and as the land portion of the contract is declared by the act itself to go to the representatives of the deceased officer, so must the half pay, after the order of priority of payees, declared in the act, have terminated—that is, after the death of the widow and children, it shall descend in the same manner as though no priority of payees had been named; and if Congress saw fit to secure it against debts thus far, it was done for the benefit of the payees. That the several acts created a solemn contract on the part of the Government with those officers, that, in case of the death of the officer, it gave to the widow and children a vested right to seven years half pay, as soon as death occurred; and in case of the death of the widow and children before Congress paid the same, then by law, as well as by the act of 1776, it became payable to the legal representatives of the children, unless Congress think proper to secure the same to the grandchildren. (Secretary's decision in case of McKenny.) If this was not so, the delay of payment on the part of the Government would defeat the rights of many claimants.

The half pay is made by the express words of the act to commence at the *death of the officer*. Many of those officers were killed or died in service in 1776, and yet Congress made no provision for giving to each officer his portion of the land until after 1800, (twenty-four years after the death,) and none for the half pay until 1790, (fourteen years after the decease of the officer.)

A party cannot, by any rules known to law or equity, delay the payment until the original party to whom the same was payable is dead, and then refuse to pay it to his representative.

5. The claimants further urge, that the laws of Congress in behalf of the heirs of many of those officers of the same class of claimants whose right is founded exclusively on the same law, established by the same rules of evidence, is a legislative construction and a public declaration of the rights of all the heirs of the other officers. They are some of the laws made by the authority of Congress, and some of the laws which the Constitution declares "shall be the supreme law of the land."

It is only by those principles by which all the highest tribunals of justice are governed. A law which they may establish in relation to *one individual claimant* shall be equally binding upon all others whose claims are founded upon the same contract, and governed by the same rules of evidence. The Constitution and the most sacred principles which are known to the administration of all law, is impartial and equal justice; and as no *individual* can avail himself of his own negligence or his own wrong in the suspension of a contract, the rule should be applied with still more force to the administration of the Government, which is always bound to insure to its citizens impartial and equal justice.

In relation to *interest*, the action of Congress has been somewhat fluctuating during an *intermediate* space of time. The more recent action of Congress and the Court of Claims has been to admit the resolve of June 3, 1784, as binding on the Government, and both concurred in allowing interest on the half-pay claims; which was admitted last (the 34th) Congress, in the name of the son of Dr. Absalom Baird, claimed

by the son, and fully referred to in the consideration of half-pay claims under the resolution of October 21, 1780.

The Court of Claims, it *would seem*, decided, in the case of Joshua R. Jewett *vs.* the United States, that only those officers who were commissioned by Congress, in the continental line, were entitled to bounty land.

2. That it must be shown that an application has been made to the proper executive departments for the bounty land, before that Court can take jurisdiction of the claim.

3. That unless there had been *some record* of the allowance of the land, and that of the service, these claims would be barred by the statute of limitations of November 2, 1785, and February 12, 1793.

Also, David Noble *vs.* United States.

As the promise of the land was in "*addition*" to, and a portion of the reward of seven years half pay, founded upon the consideration of the same service, and depending upon the same rules of evidence, the suspension of the acts of limitation in behalf of the one, would apply with equal force to the other; and as the land portion of the contract has been extended to the 26th of June, 1858, the seven years half pay portion has also been extended by the same acts. Each being a part of the same contract, one must be coextensive with the other in all its relations.



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